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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, October 20, 2009
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 330 and 347

RIN 3064–AD36

Deposit Insurance Regulations; Temporary Increase in Standard Coverage Amount; Mortgage Servicing Accounts; Revocable Trust Accounts; International Banking; Foreign Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule amending its deposit insurance regulations to: Reflect Congress's extension, until December 31, 2013, of the temporary increase in the standard maximum deposit insurance amount (''SMDIA'') from $100,000 to $250,000; finalize the interim rule, with minor modifications, on revocable trust accounts; and finalize the interim rule on mortgage servicing accounts. The FDIC is also adopting technical, conforming amendments to its international banking regulations to substitute several existing references to ''$100,000'' with references to the SMDIA.

DATES: *Effective Date:* The final rule is effective October 19, 2009.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Counsel, Legal Division (202) 898–7349; Christopher Hencke, Counsel, Legal Division (202) 898–8839; Daniel G. Lonergan, Counsel, Legal Division (202) 898–6791; or James V. Deveney, Section Chief, Deposit Insurance Section, Division of Supervision and Compliance (202) 898–6687, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Overview

In the last quarter of 2008, the FDIC issued interim rules on three deposit-insurance related matters: (1) The temporary increase in the SMDIA from $100,000 to $250,000; (2) revisions to the rules on revocable trust accounts; and (3) revisions to the rules on mortgage servicing accounts. In this final rule, the FDIC is amending its insurance regulations to reflect Congress's extension of the temporary increase in the SMDIA (from $100,000 to $250,000) through December 31, 2013, and finalizing the interim rules on revocable trust accounts and mortgage servicing accounts. The four-year extension of the increase in the SMDIA, which necessitates revisions to the deposit insurance regulations and examples therein, also affords the FDIC with the opportunity to now make technical amendments to the FDIC's international banking regulations (12 CFR Part 347) to replace several references therein to a ''$100,000'' benchmark with references to the SMDIA, consistent with the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Pub. L. 109–173).

I. Extension of Temporary Increase in the SMDIA

Background

The Emergency Economic Stabilization Act of 2008 temporarily increased the SMDIA from $100,000 to $250,000, effective October 3, 2008, through December 31, 2009.[1] On October 17, 2008, the FDIC adopted an interim rule amending its deposit insurance regulations to reflect this temporary increase in the SMDIA.[2] Subsequent to the issuance of this interim rule, on May 20, 2009, the President signed the Helping Families Save Their Homes Act of 2009, which, among other provisions, extended the temporary increase in the SMDIA from December 31, 2009 to December 31, 2013.[3] After December 31, 2013, the SMDIA will, by law, return to $100,000.

The Final Rule

The final rule amends the FDIC's deposit insurance rules (12 CFR Part 330) to indicate that the increase in the SMDIA from $100,000 to $250,000 is effective through December 31, 2013. In light of this long-term extension of the SMDIA, the FDIC also has updated the deposit insurance coverage examples provided in the insurance rules to reflect $250,000 as the SMDIA. The FDIC believes this will help to avoid any confusion that might result among depositors and financial institution employees if the examples continue to employ the $100,000 SMDIA and related numerical values.

II. Deposit Insurance Coverage of Revocable Trust Accounts

The Interim Revocable Trust Account Rule

In September 2008, the FDIC issued an interim rule designed to make the coverage rules for revocable trust accounts easier to understand and apply.[4] In particular, the interim rule eliminated the concept of ''qualifying beneficiaries.'' The elimination of the ''qualifying beneficiary'' concept was intended to achieve greater fairness by broadening the scope of eligible beneficiaries and facilitate deposit insurance determinations on revocable trust accounts.

Also, the interim rule provided a two-part deposit insurance coverage calculation method for revocable trust accounts. Under the rule, where a trust account owner has five times the SMDIA ($1,250,000) or less in revocable trust accounts at one FDIC-insured institution, the owner is insured up to the SMDIA ($250,000) per beneficiary—without regard to the exact beneficial interest of each beneficiary in the trust. For a revocable trust account owner with *both* more than $1,250,000 and more than five different beneficiaries named in the trust(s), the interim rule insures the owner for the greater of either: $1,250,000, or the aggregate total of all the beneficiaries' actual interests in the trust(s) limited to $250,000 for each beneficiary.

In addition, the interim rule sought to simplify the application of the deposit insurance rules to both life-estate interests and to irrevocable trusts springing from a revocable trust. The interim rule simplified the deposit insurance coverage rules to deem the value of each life estate interest to be the SMDIA amount. Thus, for example,

[1] Public Law 110–343 (Oct. 3, 2008).
[2] 73 FR 61658 (Oct. 17, 2008).
[3] Public Law 111–22 (May 20, 2009).
[4] 73 FR 56706 (Sept. 30, 2008).

where the owner creates a living trust account and provides a life estate interest for the owner's spouse, in addition to specific bequests to named beneficiaries, the spousal interest is deemed to be the SMDIA.

Another complication is presented when an irrevocable living trust springs from a revocable trust upon the owner's death. Under the prior rules, the coverage of the trust account often would decrease because the FDIC's rules governing irrevocable trust accounts were stricter than the rules governing revocable trust accounts.[5] To prevent this decrease in coverage, the interim rule provided that irrevocable trust accounts would be governed by the same rules as revocable trust accounts when the irrevocable trust is created through the death of the owner (grantor) of a revocable living trust.

Finally, the interim rule solicited specific comment on the effect that the revocable trust simplifications enunciated in the interim rule might have on the Deposit Insurance Fund (''DIF'') reserve ratio.[6]

The FDIC solicited comment on all aspects of the interim rule, and explicitly solicited comment on: (1) Whether the $1,250,000 threshold is a proper benchmark for distinguishing coverage for revocable trust owners based on the beneficial interests of the trust beneficiaries; (2) whether the FDIC's irrevocable trust accounts rules should be revised in order that all trusts are covered by similar rules; and (3) what effect the interim rule will have on the level of insured deposits.

Comments Received on the Interim Revocable Trust Rule

The FDIC received eighteen comments on the interim rule for revocable trust accounts. These comments included one from a large bank trade association representing all types of banks, one from a bank trade association representing community banks, and one from a smaller trade association representing community and regional banks, and thrifts, operating in one particular State. The FDIC also received fourteen comments from private citizens and one comment from some members of a national trade association for lawyers. Overall, these comments were highly favorable.

Eight commenters addressed the interim rule's overall goal of, and success at achieving, simplification, and applauded the FDIC's efforts to clarify the deposit insurance rules. One commenter advocated greater clarity in the application of the revocable trust rule's coverage of trust accounts with balances exceeding $1,250,000 and naming more than five beneficiaries, and another generally asserted that the rule contained ambiguities.

With regard to specific issues within the interim rule, ten commenters expressed strong support for the interim rule's deletion of the former rule's ''qualifying beneficiary'' concept. One commenter advocated that the effective date of this change be made retroactive to an earlier point in time in order to provide favorable treatment to depositors who had uninsured deposits in bank failures occurring in early 2008. In response to the FDIC's specific solicitation of comment on the interim rule's use of a $500,000 benchmark (presently $1,250,000) for delineating separate deposit insurance treatment for higher-dollar revocable trust interests, five commenters deemed this to be a reasonable benchmark, although one advocated that the amount be raised significantly. One commenter observed that because most owners of a revocable trust account at an insured depository institution will commonly fall below the benchmark, the interim rule's lower-dollar coverage approach—that fails to distinguish unequal beneficial interests—will simplify coverage.

In response to the interim rule's specific solicitation of comment regarding the Deposit Insurance Fund, one commenter suggested that it is likely difficult to clearly determine whether the interim rule will result in a net increase in the level of insured deposits. In short, the commenter postulated that, while the increase in deposit insurance limits and other changes made in the interim rule may permit more deposits to be deemed ''insured,'' it may also be the case that the rule's effect will be to simply permit depositors to leave higher account sums at one insured depository institution instead of having to spread such revocable trust deposits over multiple institutions.

Four commenters expressly requested that the FDIC clarify the rules regarding the proper manner of ''titling'' a payable-on-death (''POD'') account in order to ensure that the revocable trust account funds are fully insured. Specifically, one citizen commenter relayed that she had received conflicting advice from numerous local banks as to whether or not the title of her revocable trust POD account had to expressly include the acronym ''POD,'' the phrase ''in trust for'' (''ITF''), or whether it had to include the name of a beneficiary in the title, either along with, or without, such acronyms. The commenter was unsure whether current FDIC rules deem it sufficient that the other account records at the depository institution contain this information. This commenter advocated that the burden should not fall on the public to learn and clarify the titling rules. Another commenter advocated eliminating the requirement that the POD account title contain the POD/ITF designation, and asserted that it should be sufficient that the owner's account records at the bank reflect the beneficiaries. A third commenter expressed the view that banks appear to take different approaches to titling these accounts and recommended uniform rules to address this titling issue. Two of these commenters suggested that some banks' software does not easily permit the addition of ''POD'' or ''ITF'' to account titles. One bank trade association observed that the purpose of the account titling requirement is to facilitate FDIC staff's ability, at resolution, to quickly determine deposit insurance eligibility, and asked whether a bank's utilization of a computer code in the title to denote account ownership could be deemed sufficient to meet the revocable trust account titling requirements. On a separate titling issue, one commenter asked that the FDIC clarify that an owner may, in naming a POD account, name a revocable trust as a beneficiary.

The FDIC expressly solicited comment on whether the FDIC's irrevocable trust account rules should be revised so that all trusts are covered by substantially the same rules. Four comments addressed the interim rule's continuing application of the revocable trust rules to a living trust after the death of the owner (and notwithstanding the fact that such trust converts to an irrevocable trust upon such event), and all commented favorably. These commenters also urged that the deposit insurance rules for

[5] For example, assume that account owner ''A'' establishes a living trust that names three children as beneficiaries. Assume also that the trust agreement specifies that the revocable trust shall become an irrevocable trust upon the owner's (grantor's) death. In this example, during the life of the owner, the insurance coverage of an account in the name of the trust would be determined by multiplying the number of beneficiaries (3) by the SMDIA ($250,000). Thus, the account would be insured up to $750,000. Following the death of the owner, however, the coverage would change because the trust itself would change from a revocable trust to an irrevocable trust. Under the prior rules, the coverage of an irrevocable trust account would depend upon whether the interests of the beneficiaries were contingent (for example, contingent upon graduating from college or contingent upon the discretion of the trustee). Assuming that all beneficial interests were contingent, the coverage of the account would be $250,000. Thus, in this example, the coverage would decrease from $750,000 to $250,000 following the death of the owner (and following the expiration of the FDIC's six-month grace period).

[6] The reserve ratio is determined by dividing the DIF fund balance by the estimated insured deposits by the industry, 12 U.S.C. 1817(1).

irrevocable and revocable trusts should be the same.

One commenter also expressly advocated that the FDIC clarify that when a ''sole proprietor'' is a named beneficiary, then the sole proprietor is covered by the rule in his or her individual capacity. Lastly, one commenter recommended that the definition of ''non-contingent trust interest'' be expanded to include the interest of a discretionary beneficiary and presumptive remainderman of a discretionary trust.

The Final Revocable Trust Rule

The final rule closely follows the interim rule, with minor revisions. Notably, in light of the statutory extension of the temporary increase in the SMDIA, the final rule reflects the new $250,000 SMDIA, the new $1,250,000 benchmark for revocable trust account coverage following this change, and revised examples employing both of these dollar values and revised values for the hypothetical sums within the examples to enhance their illustrative utility. We also have provided additional examples illustrating how the revised rules would apply. Pursuant to statute, December 31, 2013 is the ending date for the $250,000 SMDIA, and after this date the SMDIA will revert to $100,000. At that time the FDIC will revisit the need to revise these limits and examples.

In response to several specific questions raised by commenters about the titling requirements for revocable trust accounts, clarifying language has been incorporated into the final rule to address titling of revocable trust accounts. Simply, the rule provides that, for revocable trust accounts, ''title'' includes an insured depository institution's electronic deposit account records. In addressing this issue, the FDIC is retaining the requirement that the title of a revocable trust account identify the account as such in order to qualify for coverage under the revocable trust account rules; however, the final rule clarifies that the FDIC will consider information in an insured depository institution's electronic deposit account records to determine if the titling requirement is satisfied. For example, the FDIC would recognize an account as a revocable trust account even if the account signature card does not designate the account as a revocable trust account as long as the institution's electronic deposit account records identify (through a code or otherwise) the account as a revocable trust account.

The final rule, like the interim rule, eliminates the concept of ''qualifying beneficiaries,'' and requires only that a revocable trust beneficiary be a natural person, or a charity or other non-profit organization. This change was universally applauded by commenters to the interim rule. The final rule also incorporates the interim rule's two-part calculation method for deposit insurance coverage of revocable trust accounts. While, as a result of the temporary increase in the SMDIA, the benchmark between the lower-dollar and higher-dollar revocable trust deposit insurance treatments has increased to $1,250,000 (from $500,000 as set forth in the originally-issued interim rule), it is anticipated that the lower-balance treatment for revocable trust ownership interests falling below $1,250,000 at one institution will likely capture most revocable trust accounts, and this should advance the FDIC's goals of simplifying the treatment of unequal beneficial interests and quickening deposit insurance coverage determinations. The deposit insurance coverage calculation method for revocable trust ownership interests that are both above this $1,250,000 benchmark and involve more than five beneficiaries, consistent with the interim rule, will ensure that reasonable limits remain on the maximum coverage available to revocable trust account owners and avoid the potential of unlimited coverage being afforded to such accounts through contrived trust structures. Moreover, consistent with the interim rule, where a POD account owner names his or her living trust as a beneficiary of the POD account, for insurance purposes, the FDIC will consider the beneficiaries of the trust to be the beneficiaries of the POD account.

III. Mortgage Servicing Accounts

Background

The FDIC's deposit insurance regulations include specific rules addressing the deposit insurance coverage of payments collected by mortgage servicers and deposited in accounts at insured depository institutions (''mortgage servicing accounts''). 12 CFR 330.7(d). Accounts maintained by mortgage servicers in a custodial or other fiduciary capacity may include funds paid by mortgagors (borrowers) for principal and interest, and may also include funds mortgagors advance as amounts held for the payment of taxes and insurance premiums.

Historically, under section 330.7(d), funds representing principal and interest payments in a mortgage servicing account were insured for the interest of each *owner* (mortgagee, investor or security holder) in those accounts. On the other hand, funds maintained by a servicer in a custodial or fiduciary capacity representing payments by mortgagors of taxes and insurance premiums are added together and insured for the ownership interest of each *mortgagor* in those accounts. Thus, funds representing payments of principal and interest were insurable on a pass-through basis to each mortgagee, investor, or security holder, while funds representing payments of taxes and insurance have been insurable on a pass-through basis to each mortgagor or borrower. This treatment was consistent with the FDIC's longstanding view, dating from the adoption of the rules, that principal and interest funds are owned by the owners (or mortgagee, investor or security holder) on whose behalf the servicer, as agent, accepts the principal and interest payments, and are not funds owned by the borrowers. Taxes and insurance funds, on the other hand, are insured to the mortgagors or borrowers under the view that the latter funds are still owned by the borrower until the servicer actually pays the tax and insurance bills.

In October of last year, the FDIC issued an interim rule addressing the insurance coverage of mortgage servicing accounts.[7] In the interim rule, the FDIC acknowledged that securitization methods for mortgages have become increasingly complex, with multi-layer securitization structures possible, and indicated that as a consequence it has become both more difficult and time-consuming for a servicer to identify and determine the share of any investor in a securitization and in the principal and interest funds on deposit at an insured depository institution. Prior to the issuance of the interim rule, the FDIC had become increasingly concerned that, in the event of a failure of an FDIC-insured depository institution, a servicer holding a deposit account in the institution would have a difficult and time-consuming task to identify every security holder in the securitization and determine his or her share. Further, the FDIC believed that application of the prior deposit insurance rule could result in delays in the servicer receiving the insured amounts, and result in losses for amounts that, due to the complexity of the securitization agreements, could not be attributed to the particular investors to whom the funds belong. Ultimately, because the FDIC concluded that application of the previous rule could potentially result in increased losses to otherwise insured depositors, lead to withdrawal of deposits for principal and

[7] 73 FR 61658 (Oct. 17, 2008).

interest payments from depository institutions, and unnecessarily reduce liquidity for such institutions, the FDIC issued the interim rule.

In issuing the interim rule, the FDIC sought to make the deposit insurance coverage rules for mortgage servicing accounts easy to understand and apply. Moreover, because the considerable sum of principal and interest funds on deposit at insured depository institutions serve as a significant source of liquidity for the institutions and a source of credit to the institutions' respective communities, the FDIC sought to prevent the application of the insurance rules from prompting any inadvertent, adverse consequences. To address these aims, as well as the practical issues presented by increasingly complex securitization methods, the interim rule determined deposit insurance coverage on principal and interest payments in a mortgage servicing account on a per-mortgagor (or per-borrower) basis—and not on a pass-through basis to each mortgagee, investor, or security holder—due to the fact that servicers are able to identify mortgagors more quickly than investors. This approach enables the FDIC to pay deposit insurance more quickly. Specifically, the interim rule provided deposit insurance coverage to a mortgage servicing account based on each mortgagor's payments of principal and interest into the account up to the standard maximum deposit insurance amount of $250,000 per mortgagor.

Coverage is thus provided to the mortgagees/investors as a collective group, based on the cumulative amount of the mortgagors' payments of principal and interest into the account. This deposit insurance coverage of payments of principal and interest per mortgagor is not aggregated with, nor otherwise affects, the coverage provided to each such mortgagor in other accounts the mortgagor might maintain at the same depository institution. This is to be distinguished from the deposit insurance coverage afforded to payments of taxes and insurance premiums. Consistent with their treatment historically under the deposit insurance rules, amounts in a mortgage servicing account that represent payments for taxes and insurance are insured on a pass-through basis as the funds of each respective mortgagor, but unlike a mortgagor's principal and interest payments in the mortgage servicing account, the payments for taxes and insurance *are* added to other individually owned funds of each mortgagor at the same institution and insured up to the applicable limit.

Comments on the Interim Rule's Mortgage Servicing Provisions

The FDIC received five comments on the interim rule addressing the deposit insurance coverage of mortgage servicing accounts. All five comments favored the interim rule's handling of deposit insurance coverage on payments of principal and interest in a mortgage servicing account on a per-mortgagor (or per-borrower) basis. These views included comments from a large bank trade association, a loan servicer, a large government sponsored enterprise, a loan securitization professional, along with one comment submitted by a national bank. Although all five commenters supported the FDIC's interim rule, several raised specific issues.

One commenter advocated that the regulations clarify that payments of taxes and insurance in mortgage servicing accounts and ''any similar accounts'' held by a servicer or paying agent should not be aggregated with personal accounts of a mortgagor, and noted that the interim rule was ''not clear'' in this regard. Two commenters urged the FDIC to apply the interim rule's treatment of principal and interest payments comprising mortgage servicing accounts to other types of servicing accounts that similarly consist of principal and interest payments but for non-mortgage loans, such as motor vehicle loans. In short, they suggested that the FDIC extend the interim rule's treatment of principal and interest cash flows to other types of loan securitizations and not simply mortgages, and suggested that these sums may raise liquidity concerns similar to those raised by mortgage loan servicing account funds.

Another commenter supported the interim rule but expressed concern that several types of mortgage servicing deposits might not be adequately insured. For example, this commenter advocated that the rules provide pass-through deposit insurance coverage, on a per-borrower basis, to other types of mortgage servicing funds, such as ''repair escrows, replacement reserve escrows, bond related escrow accounts, rental achievement escrows, and debt service escrows.'' This commenter urged the FDIC to separately insure such accounts, as well as escrows for taxes and insurance, up to the SMDIA.

The Final Rule on Mortgage Servicing Accounts

The final rule is essentially unchanged from the interim rule. Although one commenter urged that the FDIC clarify in the rules that payments of taxes and insurance in mortgage servicing accounts and any ''similar'' accounts held by a servicer should not be aggregated with personal accounts of a mortgagor, and asserted that the interim rule was ''not clear'' in this regard, the FDIC concludes that any additional clarification is unneeded. The interim rule expressly addressed this issue with respect to tax and insurance payments in servicing accounts, and specifically contrasted the deposit insurance treatment of payments of taxes and insurance with the insurance treatment afforded payments of principal and interest in servicing accounts. The interim rule provided that the FDIC's historical treatment of taxes and insurance payments had not changed. Drawing a clear distinction with principal and interest payments, the interim rule provided that taxes and insurance funds are instead ''insured to the mortgagors or borrowers on the theory that the borrower still owns the funds until the tax and insurance bills are actually paid by the servicer.''

The preamble to the interim rule indicated that, although the *principal and interest* payments in mortgage servicing accounts are *not* aggregated for insurance purposes with other accounts the mortgagor might maintain at the same insured depository institution, ''[a]s under the current insurance rules, under the interim rule amounts in a mortgage servicing account constituting payments of *taxes and insurance* premiums will be insured on a pass-through basis as the funds of each respective mortgagor,'' and such funds ''*will be added* to other individually owned funds held by each such mortgagor at the same insured institution.'' This was also made clear in the FDIC's Financial Institution Letter, FIL–111–2008, issued October 8, 2008. In short, the interim rule did not alter the FDIC's historical treatment of payments by mortgagors of tax and insurance premiums in mortgage servicing accounts.

It was also suggested that the FDIC extend the interim rule's deposit insurance treatment of principal and interest cash flows to servicing accounts for other types of loan securitizations—and not simply mortgages—such as motor vehicle loans. The FDIC declines to do so. As noted in the interim rule, the FDIC sought to address the increasing complexity of mortgage securitizations and the resulting impact these complexities have upon depositor certainty as to the application of deposit insurance rules, and have upon the timely resolution of deposit insurance determinations.

The FDIC also declines the commenter suggestion that separate insurance, on a pass-through, per-borrower basis be afforded to other types of mortgage servicing funds such as ''repair escrows, replacement reserve escrows, bond related escrow accounts, rental achievement escrows, and debt service escrows.'' As the FDIC noted in the interim rule, consistent with its previous deposit insurance rules, amounts in a mortgage servicing account constituting payments of taxes and insurance premiums are insured on a pass-through basis as the funds of each respective mortgagor and are added to other individually owned funds held by each such mortgagor at the same insured institution. The FDIC's interim rule sought to make the deposit insurance coverage rules for mortgage servicing accounts easy to understand and apply. Additionally, because principal and interest funds on deposit at insured depository institutions serve as both a significant source of liquidity for the institutions and a significant source of credit to the institution's community, the FDIC sought to ensure that no inadvertent adverse consequences resulted from the application of the deposit insurance rules. It is not clear that the suggested revisions would be consistent with either of these aims. Although commenter[s] suggested that other types of ''escrow'' funds should garner similar treatment under the insurance rules as do deposits representing tax and insurance payments, the comment does not clearly identify in what specific manner the legal rights and obligations attendant to these various types of bond-related, debt service, and rental achievement escrows are similar to the rights and obligations of mortgagors in their tax and insurance payments. Nor is it clear whether, and to what extent, such payments represent a significant liquidity source for depository institutions such that the need for more specific clarity as to deposit insurance is needed in order to avert any inadvertent consequences or losses to borrowers or investors.

IV. Technical Amendments to FDIC International Banking Regulations

The FDIC is also amending its Part 347 International Banking regulations to make technical, conforming amendments relating to the SMDIA. The FDI Reform Act introduced the term ''SMDIA'' and instituted several substantive changes to the deposit insurance coverage provisions in the FDI Act. Additionally, the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (''Reform Conforming Act''), Public Law 109–173, amended the International Banking Act of 1978, 12 U.S.C. 3104, necessitating the need for technical conforming amendments to substitute the term ''SMDIA'' in place of ''$100,000'' in the FDIC's International Banking regulations. 12 CFR Part 347.[8] The four-year extension in the increase in the SMDIA, which provides the FDIC with the necessity to make revisions to the deposit insurance regulations and examples therein, also affords the FDIC with the opportunity to now make technical amendments to the FDIC's international banking regulations to replace several distinct references to a ''$100,000'' benchmark with references to the SMDIA, consistent with the Reform Conforming Act.

V. Paperwork Reduction Act

The final rule will revise the FDIC's deposit insurance regulations. It will not involve any new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information collection has been submitted to the Office of Management and Budget for review.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). The Regulatory Flexibility Act provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant impact on a substantial number of small entities.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that the final rule will not have a significant impact on a substantial number of small entities. The final rule implements the temporary increase in the SMDIA, simplifies the coverage rules for mortgage servicing accounts, and simplifies the deposit insurance rules for revocable trust accounts held at FDIC-insured depository institutions.

VII. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681). The final rule should have a positive effect on families by clarifying the coverage rules for mortgage servicing accounts, which contain, for a period of time, the mortgage payments from borrowers, and the rules for revocable trust accounts, a popular type of consumer bank account.

VIII. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (''SBREFA'') (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

IX. Plain Language

Section 722 of the Gramm-Leach-Blilely Act (Pub. L. 106–102, 113 Stat. 1338, 1471), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner, and has made revisions to the previous interim rule in response to commenter concerns seeking clarification of the application of the deposit insurance rules.

List of Subjects

12 CFR Part 330

Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

12 CFR Part 347

Bank deposit insurance, Banks, Banking, International banking; Foreign banks.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends parts 330 and 347 of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

■ 1. The authority citation for part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(1), 1813(m), 1817(i), 1818(q), 1819 (Tenth), 1820(f), 1821(a), 1822(c).

[8] Per statute, the Reform Conforming Act substitution of the SMDIA in the international banking provisions was effective on April 1, 2006. Reform Conforming Act § 2; 71 FR 14629 (March 23, 2006).

■ 2. In § 330.1, paragraph (n) is revised to read as follows:

§ 330.1 Definitions.

* * * * *

(n) *Standard maximum deposit insurance amount,* referred to as the ''SMDIA'' hereafter, means $250,000 from October 3, 2008, until December 31, 2013. Effective January 1, 2014, the SMDIA means $100,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the FDI Act (12 U.S.C. 1821(a)(1)(F)). All examples in this part use $250,000 as the SMDIA.

* * * * *

■ 3. In § 330.7, paragraph (d) is revised to read as follows:

§ 330.7 Account held by an agent, nominee, guardian, custodian or conservator.

* * * * *

(d) *Mortgage servicing accounts.* Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal and interest, shall be insured for the cumulative balance paid into the account by the mortgagors, up to the limit of the SMDIA per mortgagor. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a) of this section for the ownership interest of each mortgagor in such accounts. This provision is effective as of October 10, 2008, for all existing and future mortgage servicing accounts.

* * * * *

■ 4. In § 330.9, paragraph (b) is revised to read as follows:

§ 330.9 Joint ownership accounts.

* * * * *

(b) *Determination of insurance coverage.* The interests of each co-owner in all qualifying joint accounts shall be added together and the total shall be insured up to the SMDIA. (Example: ''A&B'' have a qualifying joint account with a balance of $150,000; ''A&C'' have a qualifying joint account with a balance of $200,000; and ''A&B&C'' have a qualifying joint account with a balance of $375,000. A's combined ownership interest in all qualifying joint accounts would be $300,000 ($75,000 plus $100,000 plus $125,000); therefore, A's interest would be insured in the amount of $250,000 and uninsured in the amount of $50,000. B's combined ownership interest in all qualifying joint accounts would be $200,000 ($75,000 plus $125,000); therefore, B's interest would be fully insured. C's combined ownership interest in all qualifying joint accounts would be $225,000 ($100,000 plus $125,000); therefore, C's interest would be fully insured.

* * * * *

■ 5. Section 330.10 is revised to read as follows:

§ 330.10 Revocable trust accounts.

(a) *General rule.* Except as provided in paragraph (e) of this section, the funds owned by an individual and deposited into one or more accounts with respect to which the owner evidences an intention that upon his or her death the funds shall belong to one or more beneficiaries shall be separately insured (from other types of accounts the owner has at the same insured depository institution) in an amount equal to the total number of different beneficiaries named in the account(s) multiplied by the SMDIA. This section applies to all accounts held in connection with informal and formal testamentary revocable trusts. Such informal trusts are commonly referred to as payable-on-death accounts, in-trust-for accounts or Totten Trust accounts, and such formal trusts are commonly referred to as living trusts or family trusts. (*Example 1:* Account Owner ''A'' has a living trust account with four different beneficiaries named in the trust. A has no other revocable trust accounts at the same FDIC-insured institution. The maximum insurance coverage would be $1,000,000, determined by multiplying 4 times $250,000 (the number of beneficiaries times the SMDIA). (*Example 2:* Account Owner ''A'' has a payable-on-death account naming his niece and cousin as beneficiaries, and A also has, at the same FDIC-insured institution, another payable-on-death account naming the same niece and a friend as beneficiaries. The maximum coverage available to the account owner would be $750,000. This is because the account owner has named only three *different* beneficiaries in the revocable trust accounts—his niece and cousin in the first, and the same niece and a friend in the second. The naming of the same beneficiary in more than one revocable trust account, whether it be a payable-on-death account or living trust account, does not increase the total coverage amount.) (*Example 3:* Account Owner ''A'' establishes a living trust account, with a balance of $300,000, naming his two children ''B'' and ''C'' as beneficiaries. A also establishes, at the same FDIC-insured institution, a payable-on-death account, with a balance of $300,000, also naming his children B and C as beneficiaries. The maximum coverage available to A is $500,000, determined by multiplying 2 times $250,000 (the number of different beneficiaries times the SMDIA). A is uninsured in the amount of $100,000. This is because all funds that a depositor holds in both living trust accounts and payable-on-death accounts, at the same FDIC-insured institution and naming the same beneficiaries, are aggregated for insurance purposes and insured to the applicable coverage limits.)

(b) *Required intention and naming of beneficiaries.* (1) The required intention in paragraph (a) of this section that upon the owner's death the funds shall belong to one or more beneficiaries must be manifested in the ''title'' of the account using commonly accepted terms such as, but not limited to, ''in trust for,'' ''as trustee for,'' ''payable-on-death to,'' or any acronym therefor. For purposes of this requirement, ''title'' includes the electronic deposit account records of the institution. (For example, the FDIC would recognize an account as a revocable trust account even if the title of the account signature card does not designate the account as a revocable trust account as long as the institution's electronic deposit account records identify (through a code or otherwise) the account as a revocable trust account.) The settlor of a revocable trust shall be presumed to own the funds deposited into the account.

(2) For informal revocable trust accounts, the beneficiaries must be specifically named in the deposit account records of the insured depository institution.

(c) *Definition of beneficiary.* For purposes of this section, a beneficiary includes a natural person as well as a charitable organization and other non-profit entity recognized as such under the Internal Revenue Code of 1986, as amended.

(d) *Interests of beneficiaries outside the definition of beneficiary in this section.* If a beneficiary named in a trust covered by this section does not meet the definition of beneficiary in paragraph (c) of this section, the funds corresponding to that beneficiary shall be treated as the individually owned (single ownership) funds of the owner(s). As such, they shall be aggregated with any other single ownership accounts of such owner(s) and insured up to the SMDIA per owner. (*Example:* Account Owner ''A'' establishes a payable-on-death account naming a pet as beneficiary with a balance of $100,000. A also has an individual account at the same FDIC-insured institution with a balance of

$175,000. Because the pet is not a ''beneficiary,'' the two accounts are aggregated and treated as a single ownership account. As a result, A is insured in the amount of $250,000, but is uninsured for the remaining $25,000.)

(e) *Revocable trust accounts with aggregate balances exceeding five times the SMDIA and naming more than five different beneficiaries.* Notwithstanding the general coverage provisions in paragraph (a) of this section, for funds owned by an individual in one or more revocable trust accounts naming more than five different beneficiaries and whose aggregate balance is more than five times the SMDIA, the maximum revocable trust account coverage for the account owner shall be the greater of either: five times the SMDIA or the aggregate amount of the interests of each different beneficiary named in the trusts, to a limit of the SMDIA per different beneficiary. (*Example 1:* Account Owner ''A'' has a living trust with a balance of $1 million and names two friends, ''B'' and ''C'' as beneficiaries. At the same FDIC-insured institution, A establishes a payable-on-death account, with a balance of $1 million naming his two cousins, ''D'' and ''E'' as beneficiaries. Coverage is determined under the general coverage provisions in paragraph (a) of this section, and not this paragraph (e). This is because all funds that A holds in both living trust accounts and payable-on-death accounts, at the same FDIC-insured institution, are aggregated for insurance purposes. Although A's aggregated balance of $2 million is more than five times the SMDIA, A names only four different beneficiaries, and coverage under this paragraph (e) applies only if there are more than five different beneficiaries. A is insured in the amount of $1 million (4 beneficiaries times the SMDIA), and uninsured for the remaining $1 million.) (*Example 2:* Account Owner ''A'' has a living trust account with a balance of $1,500,000. Under the terms of the trust, upon A's death, A's three children are each entitled to $125,000, A's friend is entitled to $15,000, and a designated charity is entitled to $175,000. The trust also provides that the remainder of the trust assets shall belong to A's spouse. In this case, because the balance of the account exceeds $1,250,000 (5 times the SMDIA) and there are more than five different beneficiaries named in the trust, the maximum coverage available to A would be the greater of: $1,250,000 or the aggregate of each different beneficiary's interest to a limit of $250,000 per beneficiary. The beneficial interests in the trust for purposes of determining coverage are: $125,000 for each of the children (totaling $375,000), $15,000 for the friend, $175,000 for the charity, and $250,000 for the spouse (because the spouse's $935,000 is subject to the $250,000 per-beneficiary limitation). The aggregate beneficial interests total $815,000. Thus, the maximum coverage afforded to the account owner would be $1,250,000, the greater of $1,250,000 or $815,000.)

(f) *Co-owned revocable trust accounts.* (1) Where an account described in paragraph (a) of this section is established by more than one owner, the respective interest of each account owner (which shall be deemed equal) shall be insured separately, per different beneficiary, up to the SMDIA, subject to the limitation imposed in paragraph (e) of this section. (*Example 1:* A and B, two individuals, establish a payable-on-death account naming their three nieces as beneficiaries. Neither A nor B has any other revocable trust accounts at the same FDIC-insured institution. The maximum coverage afforded to A and B would be $1,500,000, determined by multiplying the number of owners (2) times the SMDIA ($250,000) times the number of different beneficiaries (3). In this example, A would be entitled to revocable trust coverage of $750,000 and B would be entitled to revocable trust coverage of $750,000.) (*Example 2:* A and B, two individuals, establish a payable-on-death account naming their two children, two cousins, and a charity as beneficiaries. The balance in the account is $1,750,000. Neither A nor B has any other revocable trust accounts at the same FDIC-insured institution. The maximum coverage would be determined (under paragraph (a) of this section) by multiplying the number of account owners (2) times the number of different beneficiaries (5) times $250,000, totaling $2,500,000. Because the account balance ($1,750,000) is less than the maximum coverage amount ($2,500,000), the account would be fully insured.) (*Example 3:* A and B, two individuals, establish a living trust account with a balance of $3.75 million. Under the terms of the trust, upon the death of both A and B, each of their three children is entitled to $600,000, B's cousin is entitled to $380,000, A's friend is entitled to $70,000, and the remaining amount ($1,500,000) goes to a charity. Under paragraph (e) of this section, the maximum coverage, as to each co-owned account owner, would be the greater of $1,250,000 or the aggregate amount (as to each co-owner) of the interest of each different beneficiary named in the trust, to a limit of $250,000 per account owner per beneficiary. The beneficial interests in the trust considered for purposes of determining coverage for account owner *A* are: $750,000 for the children (each child's interest attributable to A, $300,000, is subject to the $250,000-per-beneficiary limitation), $190,000 for the cousin, $35,000 for the friend, and $250,000 for the charity (the charity's interest attributable to A, $750,000, is subject to the $250,000 per-beneficiary limitation). As to A, the aggregate amount of the beneficial interests eligible for deposit insurance coverage totals $1,225,000. Thus, the maximum coverage afforded to account co-owner A would be $1,250,000, which is the greater of $1,250,000 or the aggregate of all the beneficial interests attributable to A (limited to $250,000 per beneficiary), which totaled slightly less at $1,225,000. Because B has equal ownership interest in the trust, the same analysis and coverage determination also would apply to B. Thus, of the total account balance of $3.75 million, $2.5 million would be insured and $1.25 million would be uninsured.)

(2) Notwithstanding paragraph (f)(1) of this section, where the owners of a co-owned revocable trust account are themselves the sole beneficiaries of the corresponding trust, the account shall be insured as a joint account under § 330.9 and shall not be insured under the provisions of this section. (*Example:* If A and B establish a payable-on-death account naming themselves as the sole beneficiaries of the account, the account will be insured as a joint account because the account does not satisfy the intent requirement (under paragraph (a) of this section) that the funds in the account belong to the named beneficiaries upon the owners' death. The beneficiaries are in fact the actual owners of the funds during the account owners' lifetimes.)

(g) For deposit accounts held in connection with a living trust that provides for a life-estate interest for designated beneficiaries, the FDIC shall value each such life estate interest as the SMDIA for purposes of determining the insurance coverage available to the account owner under paragraph (e) of this section. (*Example:* Account Owner ''A'' has a living trust account with a balance of $1,500,000. Under the terms of the trust, A provides a life estate interest for his spouse. Moreover, A's three children are each entitled to $275,000, A's friend is entitled to $15,000, and a designated charity is entitled to $175,000. The trust also provides that the remainder of the trust assets shall belong to A's granddaughter. In this case, because the balance of the account exceeds $1,250,000 ((5) five

times the SMDIA) and there are more than five different beneficiaries named in the trust, the maximum coverage available to A would be the greater of: $1,250,000 or the aggregate of each different beneficiary's interest to a limit of $250,000 per beneficiary. The beneficial interests in the trust considered for purposes of determining coverage are: $250,000 for the spouse's life estate, $750,000 for the children (because each child's $275,000 is subject to the $250,000 per-beneficiary limitation), $15,000 for the friend, $175,000 for the charity, and $250,000 for the granddaughter (because the granddaughter's $310,000 remainder is limited by the $250,000 per-beneficiary limitation). The aggregate beneficial interests total $1,440,000. Thus, the maximum coverage afforded to the account owner would be $1,440,000, the greater of $1,250,000 or $1,440,000.)

(h) *Revocable trusts that become irrevocable trusts.* Notwithstanding the provisions in section 330.13 on the insurance coverage of irrevocable trust accounts, if a revocable trust account converts in part or entirely to an irrevocable trust upon the death of one or more of the trust's owners, the trust account shall continue to be insured under the provisions of this section. (*Example:* Assume A and B have a trust account in connection with a living trust, of which they are joint grantors. If upon the death of either A or B the trust transforms into an irrevocable trust as to the deceased grantor's ownership in the trust, the account will continue to be insured under the provisions of this section.)

(i) This section shall apply to all existing and future revocable trust accounts and all existing and future irrevocable trust accounts resulting from formal revocable trust accounts.

PART 347—INTERNATIONAL BANKING

■ 6. The authority citation for part 347 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108, 3109; Title IX, Pub. L. 98–181, 97 Stat. 1153.

■ 7. In § 347.202:
■ A. Paragraph (e) is revised.
■ B. Paragraphs (v), (w) and (x) are redesignated as (w), (x) and (y), respectively, and a new paragraph (v) is added.

The revision and addition read as follows:

§ 347.202 Definitions.

* * * * *

(e) *Domestic retail deposit activity* means the acceptance by a Federal or State branch of any initial deposit of less than an amount equal to the standard maximum deposit insurance amount (''SMDIA'').

* * * * *

(v) *Standard maximum deposit insurance amount,* referred to as the ''SMDIA'' hereafter, means $250,000 from October 3, 2008, until December 31, 2013. Effective January 1, 2014, the SMDIA means $100,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the FDI Act (12 U.S.C. 1821(a)(1)(F)).

* * * * *

■ 8. In § 347.206, paragraph (c) is revised to read as follows:

§ 347.206 Domestic retail deposit activity requiring deposit insurance by U.S. branch of a foreign bank.

* * * * *

(c) *Grandfathered insured branches.* Domestic retail accounts with balances of less than an amount equal to the SMDIA that require deposit insurance protection may be accepted or maintained in an insured branch of a foreign bank only if such branch was an insured branch on December 19, 1991.

* * * * *

■ 9. In § 347.213, paragraph (a)(1) is revised to read as follows:

§ 347.213 Establishment or operation of noninsured foreign branch.

(a) * * *

(1) The branch only accepts initial deposits in an amount equal to the SMDIA or greater; or

* * * * *

■ 10. In § 347.215:
■ A. Paragraph (a) introductory text is revised.
■ B. Paragraph (b)(1) is revised.

The revisions read as follows:

§ 347.215 Exemptions from deposit insurance requirement.

(a) *Deposit activities not requiring insurance.* A State branch will not be considered to be engaged in domestic retail deposit activity that requires the foreign bank parent to establish an insured U.S. bank subsidiary if the State branch accepts initial deposits only in an amount of less than an amount equal to the SMDIA that are derived solely from the following:

* * * * *

(b) *Application for an exemption.* (1) Whenever a foreign bank proposes to accept at a State branch initial deposits of less than an amount equal to the SMDIA and such deposits are not otherwise exempted under paragraph (a) of this section, the foreign bank may apply to the FDIC for consent to operate the branch as a noninsured branch. The Board of Directors may exempt the branch from the insurance requirement if the branch is not engaged in domestic retail deposit activities requiring insurance protection. The Board of Directors will consider the size and nature of depositors and deposit accounts, the importance of maintaining and improving the availability of credit to all sectors of the United States economy, including the international trade finance sector of the United States economy, whether the exemption would give the foreign bank an unfair competitive advantage over United States banking organizations, and any other relevant factors in making this determination.

* * * * *

Dated at Washington, DC, this 9th day of September 2009.

By order of the Board of Directors.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. E9–22406 Filed 9–16–09; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2009–0770; Airspace Docket No. 09–ASW–20]

RIN 2120–AA66

Amendment to Restricted Areas R–5103A, R–5103B, and R–5103C; McGregor, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action amends the airspace description of Restricted Areas R–5103A, R–5103B, and R–5103C; McGregor, NM. In a final rule published in the **Federal Register** on November 3, 1994, (59 FR 55030), an error was made in the airspace description to the time of designation for Restricted Areas R–5103A, R–5103B, R–5103C and R–5103D (R–5130D was subsequently revoked on January 20, 2005 (69 FR 72113)). Specifically, the time of designation stated ''0700–2000 local time, Monday–Friday, other times by NOTAM'' instead of ''0700–2000 local time Monday–Friday; other times by NOTAM''. This action corrects that error.

DATES: *Effective Dates:* 0901 UTC, October 22, 2009.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On November 3, 1994, a final rule for Airspace Docket No. 94–ASW–12, was published in the **Federal Register** (59 FR 55030), changing the time of designation for Restricted Areas R–5103A, R–5103B, R–5103C, and R–5103D at McGregor, NM. In that rule, the preamble discussion stated the time of designation was being changed from the existing time of designation, ''0700–2000 local time; other times by NOTAM'' to ''0700–2000 local time, Monday–Friday; other times by NOTAM'' to lessen the burden on the public and accurately reflect their actual time of use. However, in the regulatory language, the time of designation was published as ''0700–2000 local time, Monday–Friday, other times by NOTAM''. Having changed the semicolon between the days of the week and NOTAM provision to a comma unintentionally linked the NOTAM provision to the days of the week listed in the legal description only. The unintended consequence of this error is that the NOTAM provision does not apply to Saturdays or Sundays, as it did previous to that final rule. Had a semicolon been published in the regulatory text between the days of the week and the NOTAM provision, the ''other times by NOTAM'' provision would apply daily.

Subsequent to the rule published November 3, 1994, (59 FR 55030), a second rule affecting R–5103A, R–5103B, R–5103C, and R–5103D was published December 13, 2004, (69 FR 72113), Airspace Docket No. 04–ASW–11, FAA Docket No. FAA–2004–17773. This second rule modified the boundaries and designated altitudes for Restricted Areas R–5103A, R–5103B, and R–5103C, and revoked R–5103D to allow the U.S. Army to activate the restricted areas in a manner that was more consistent with the actual utilization of the airspace. As a result of this action, the correction to Restricted Area R–5103D is not necessary as it no longer exists.

Based on the original intent of the final rule published November 3, 1994, and subsequently modified by a second final rule published December 13, 2004, the NOTAM provisions for R–5103A, R–5103B, and R–5103C should be applicable daily, outside the 0700–2000 local time, Monday through Friday, published hours currently listed in that final rule. This action corrects that error by amending the time of designation for R–5103A, R–5103B, and R–5103C to read, ''0700–2000 local time, Monday–Friday; other times by NOTAM''.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the legal description as published in the **Federal Register** on November 3, 1994 (59 FR 55030), Airspace Docket 94–ASW–12, and incorporated by reference in 14 CFR 73, is corrected as follows:

§ 73.51 [Amended]

■ On page 55031, correct the airspace description for the time of designation for Restricted Areas R–5103A, R–5103B, and R–5103C, to read as follows:

* * * * *

R–5103A McGregor, NM [Amended]

By removing the current ''Time of designation. 0700–2000 local time, Monday-Friday, other times by NOTAM.'' and substituting the following: ''Time of designation. 0700–2000 local time Monday-Friday; other times by NOTAM.''

R–5103B McGregor, NM [Amended]

By removing the current ''Time of designation. 0700–2000 local time, Monday-Friday, other times by NOTAM.'' and substituting the following: ''Time of designation. 0700–2000 local time Monday-Friday; other times by NOTAM.''

R–5103C McGregor, NM [Amended]

By removing the current ''Time of designation. 0700–2000 local time, Monday-Friday, other times by NOTAM.'' and substituting the following: ''Time of designation. 0700–2000 local time Monday-Friday; other times by NOTAM.''

* * * * *

Issued in Washington, DC, on August 27, 2009.

Ellen Crum,

Acting Manager, Airspace and Rules Group.

[FR Doc. E9–21263 Filed 9–16–09; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR parts 230, 240 and 260

[Release Nos. 33–9063; 34–60663; 39–2467; File No. S7–02–09]

RIN 3235–AK26

Extension of Temporary Exemptions for Eligible Credit Default Swaps To Facilitate Operation of Central Counterparties To Clear and Settle Credit Default Swaps

AGENCY: Securities and Exchange Commission.

ACTION: Interim final temporary rules; extension.

SUMMARY: We are adopting amendments to the expiration dates in our interim final temporary rules that provide exemptions under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939 for certain credit default swaps in order to facilitate the operation of one or more central counterparties for those credit default swaps. Under the amendments, the expiration dates of the interim final temporary rules will be extended to November 30, 2010.

DATES: *Effective Date:* This rule is effective September 17, 2009, and the expiration dates for the interim final temporary rules and amendments published January 22, 2009 (74 FR 3967) is extended from September 25, 2009 to November 30, 2010.

FOR FURTHER INFORMATION CONTACT: Amy M. Starr, Senior Special Counsel, or Sebastian Gomez Abero, Attorney, Office of Chief Counsel, Division of Corporation Finance, at (202) 551–3500, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to the following rules: interim final temporary Rule 239T and Rule 146 under the Securities Act of 1933 (''Securities Act''),[1] interim final temporary Rule 12a–0T and Rule 12h–1(h)T under the Securities Exchange Act of 1934 (''Exchange Act''),[2] and interim final temporary Rule 4d–11T under the Trust Indenture Act of 1939 (''Trust Indenture Act'').[3]

I. Background

In January 2009, we adopted interim final temporary Rule 239T and a temporary amendment to Rule 146 under the Securities Act, interim final

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 78a *et seq.*

[3] 15 U.S.C. 77aaa *et seq.*

temporary Rules 12a–10T and 12h–1(h)T under the Exchange Act, and interim final temporary Rule 4d–11T under the Trust Indenture Act (collectively, the ''Interim Final Temporary Rules'').[4] We adopted these rules in connection with temporary exemptive orders we issued to a clearing agency acting as a central counterparty (''CCP''), which exempted the CCP from the requirement to register as a clearing agency under Section 17A of the Exchange Act[5] solely to perform the functions of a clearing agency for certain credit default swap (''CDS'') transactions. The exemptive orders also exempted certain eligible contract participants[6] and others from certain Exchange Act requirements with respect to certain CDS.[7] Also at that time, we temporarily exempted any exchange that effects transactions in certain CDS from the requirements under Sections 5 and 6 of the Exchange Act[8] to register as a national securities exchange, and any broker or dealer that effects transactions on an exchange in certain CDS from the requirements of Section 5 of the Exchange Act.

The Interim Final Temporary Rules, and the temporary exemptive orders we provided under the Exchange Act, were intended to facilitate the operation of one or more CCPs that clear and settle CDS transactions while enabling us to provide oversight to the CDS market.[9] Since the adoption of the interim final rules, only one CCP, ICE U.S. Trust LLC (''ICE Trust''), has been actively engaged as a CCP in clearing CDS transactions in the U.S. in accordance with our exemptions.[10] As of August 28, 2009, ICE Trust had cleared more than 22,800 CDS transactions with a notional value of $1.9 trillion.[11] We believe that the clearing of CDS transactions by ICE Trust has contributed and we anticipate will continue to contribute to increased transparency[12] and the reduction of systemic risk in the CDS market.[13]

We also granted exemptive orders to four other CCPs to clear CDS, two of which were approved in July 2009.[14] The Chicago Mercantile Exchange, to whom we granted an exemptive order in March 2009, has indicated that it continues to work with buy and sell participants in the CDS market to promote its CCP.[15] ICE Clear Europe Limited (''ICE Europe'') and Eurex Clearing AG (''Eurex'') have begun clearing CDS transactions in Europe.[16]

Since the adoption of the Interim Final Temporary Rules, a number of legislative initiatives relating to the regulation of derivatives, including CDS, have been introduced by members of Congress and recommended by the United States Department of the Treasury (''Treasury'').[17] Congress has not yet taken definitive action with respect to any of the legislative initiatives or the Treasury proposals. Separately, in July 2009, the Committee on Payment and Settlement Systems (''CPSS'') and the Technical Committee of the International Organization of Securities Commissions (''IOSCO'') established a working group to review the application of the CPSS–IOSCO Recommendations for Central Counterparties (''Recommendations'') with respect to OTC derivatives.[18] The Recommendations set out standards for risk management of CCPs. The working group plans to identify key issues that can arise when a CCP provides central clearing services for OTC derivatives transactions.[19]

At the time of adoption of the Interim Final Temporary Rules, we requested comment on various aspects of the rule provisions. We received a total of 15 letters, only two of which commented specifically on the interim temporary final rules. Those two letters generally supported allowing CCPs to clear and settle CDS transactions in accordance with the terms of the Interim Final Temporary Rules; but neither of the commenters specifically addressed the duration of the Interim Final Temporary Rules and temporary amendments.[20] The other commenters raised issues not directly related to this rulemaking.[21]

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[4] *See* Exchange Act Release No. 59246 (Jan. 14, 2009).

[5] 15 U.S.C. 78q–1.

[6] *See* 7 U.S.C. 1a(12).

[7] *See* Exchange Act Release Nos. 59164 and 59165 (Dec. 24, 2008).

[8] 15 U.S.C. 78e and 78f.

[9] For a discussion of concerns related to the market in CDS, and the development of the exemptive orders and interim temporary rules, *see* Exchange Act Release No. 59246 (Jan. 14, 2009).

[10] *See* Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009) (temporary exemption for ICE U.S. Trust LLC).

[11] *See* Historical Daily Volume Report—ICE Trust U.S., available at *https://www.theice.com/marketdata/reports/ReportCenter.shtml?reportId=26.*

[12] *See* Testimony of Mark Lenczowski, Managing Director and Assistant General Counsel at JPMorgan Chase & Co., to the Senate Agriculture Committee (June 4, 2009) (In his testimony, Mr. Lenczowski indicated, in the context of CDS clearing by ICE Trust, that ''[c]learing is a highly transparent process. * * *'').

[13] As of June 30, 2009, ICE Trust had reduced the notional amount of CDS open interest, or net exposure, from over $1.3 trillion to $168.5 billion by clearing trades and netting positions. *See,* Quarterly Report on Form 10–Q for the quarter ended June 30, 2009 (filed on August 5, 2009). ICE Trust also has a guarantee fund that provides additional protection in the event of a clearing participant default. *See* Exchange Act Release No. 59527, *supra* Note 10.

[14] *See* Exchange Act Release No. 60373 (July 23, 2009) (temporary exemption for Eurex Clearing AG); Exchange Act Release No. 60372 (July 23, 2009) (temporary exemption for ICE Clear Europe Limited); Exchange Act Release No. 59578 (Mar. 13, 2009) (temporary exemption for Chicago Mercantile Exchange Inc.); and Exchange Act Release No. 59164 (Dec. 24, 2008) (temporary exemption for LIFFE A&M and LCH.Clearnet Ltd.). LIFFE A&M and LCH.Clearnet Ltd., to whom we granted exemptive orders in December 2008, indicated that they will suspend their plans to clear CDS. *See,* Alastair Marsh, *NYSE Liffe and LCH.Clearnet close CDS clearing service* (Aug. 12, 2009), available at *http://www.risk.net/public/showPage.html?page=867491.*

[15] *See* Christine Birkner, *CDS Clearing Battle (Buy Side vs. Sell Side),* Futures (July 1, 2009) (''A spokesperson for CME Group says, 'We continue to work with buy and sell participants to demonstrate the value of our offering.' '').

[16] *See* Press Release, IntercontinentalExchange, ICE Clear Europe Clears Euro 51 Billion in Third Week of European CDS Processing; Announces New CDS Clearing Member (Aug. 17, 2009), available at *http://ir.theice.com/releasedetail.cfm?ReleaseID=403509. See also,* Press Release, Eurex Clearing AG, Eurex Credit Clear Clears First Single Name CDS Worldwide (Aug. 28, 2009), available at *http://www.eurexclearing.com/about/press/press_647_en.html.*

[17] *See, e.g.,* Derivatives Trading Integrity Act of 2009 (S. 272) (introduced by Senator Tom Harkin in January 2009); The Derivatives Markets Transparency and Accountability Act (H.R. 977) (introduced by Representative Collin Peterson in February 2009); Authorizing the Regulation of Swaps Act (S. 961) (introduced by Senator Carl Levin and Senator Susan Collins in May 2009); Treasury's framework for regulatory reform (released in June 2009); Derivative Trading Accountability and Disclosure Act (H.R. 3300) (introduced by Representative Michael McMahon in July 2009); Description of Principles for OTC Derivatives Legislation (announced by Representative Barney Frank and Representative Collin Peterson in July 2009); Senator Charles Schumer's announcement that he is drafting a bill establishing central trade repositories for OTC derivatives markets (August 2009); and Over-the-Counter Derivatives Markets Act of 2009 (prepared by Treasury and sent to Congress in August 2009).

[18] *See* Press Release, Bank for International Settlements, CPSS–IOSCO working group on the review of the ''Recommendations for Central Counterparties'' (July 20, 2009), available at *http://www.bis.org/press/p090720.htm.*

[19] ''Where necessary, the working group will propose guidance on how CCPs for OTC derivatives may meet the standards set out by the recommendations and will identify any areas in which the recommendations might be strengthened or expanded to better address risks associated with the central clearing of OTC derivatives. Participants in the working group include representatives of the central banks that are members of the CPSS, representatives of the securities regulators that are members of the IOSCO Technical Committee, and representatives of the International Monetary Fund and the World Bank.'' *Id.*

[20] *See* letters from the Yale Law School Capital Markets and Financial Instruments Clinic (March 23, 2009) and from IDX Capital (March 23, 2009).

[21] The public comments we received are available for inspection in the Commission's Public Reference Room at 100 F St., NE., Washington, DC 20549 in File No. S7–02–09. They are also available online at *http://www.sec.gov/comments/s7-02-09/s70209.shtml.*

The Interim Final Temporary Rules expire on September 25, 2009. We have determined that it is necessary and appropriate to extend the expiration date of the Interim Final Temporary Rules to November 30, 2010.[22]

II. Discussion of the Final Temporary Rules

We are adopting amendments to the Interim Final Temporary Rules to extend the expiration date of each of the rules to November 30, 2010. We are not making any other changes to the Interim Final Temporary Rules.

A. Securities Act Rule 239T and Rule 146

Securities Act Rule 239T exempts from all provisions of the Securities Act, except the anti-fraud provisions of Section 17(a), certain CDS (''eligible CDS'')[23] that are offered and sold only to ''eligible contract participants,''[24] and that are being or will be issued or cleared by a CCP satisfying the conditions set forth in the CCP exemptions, or registered as a clearing agency under Section 17A of the Exchange Act (''Registered or Exempt CCP''). Hence, under Securities Act Rule 239T, the offer and sale of eligible CDS are exempt from the registration requirements of the Securities Act if the eligible CDS is or will be issued or cleared by a Registered or Exempt CCP, and offered and sold only to an eligible contract participant. Communications used in connection with such offers and sales are not subject to Section 12(a)(2) liability under the Securities Act. Securities Act Rule 239T assures the availability of information to buyers and sellers of CDS due to certain information conditions in the CCP exemptive orders.[25]

As we noted in January 2009, absent this exemption, the Securities Act may require registration of the offer and sale of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP. Without also exempting the offers and sales of the eligible CDS by a Registered or Exempt CCP from the registration requirements of the Securities Act and the Exchange Act and the provisions of the Trust Indenture Act, we believe that the CCPs would not be able to operate in the manner contemplated by the Exchange Act exemptive orders. In addition, the Securities Act, Exchange Act and Trust Indenture Act exemptions are intended to encourage market participants to clear their CDS through the CCPs.

Securities Act Rule 239T also provides that any offer or sale of an eligible CDS that is or will be issued or cleared by a Registered or Exempt CCP by or on behalf of the issuer of a security, an affiliate of such issuer, or an underwriter, if such security is delivered in settlement or whose value is used to determine the amount of the settlement obligation, will constitute a ''contract for sale of,'' ''sale of,'' ''offer for sale,'' or ''offer to sell'' such security under Section 2(a)(3) of the Securities Act.[26] This provision is intended to ensure that an eligible CDS that is or will be issued or cleared by a Registered or Exempt CCP cannot be used by an issuer, affiliate of an issuer or underwriter to circumvent the registration requirements of Section 5 with respect to an issuer's security for such eligible CDS.[27] As a result, a transaction by such persons in an eligible CDS that is or will be issued or cleared by a Registered or Exempt CCP having such securities of the issuer also is a transaction in the issuer's securities that must be registered under the Securities Act, unless an exemption from registration is available.

We also adopted on an interim final temporary basis an amendment to Securities Act Rule 146. Under the temporary amendment to Rule 146, eligible contract participants that are sold eligible CDS in reliance on interim final temporary Securities Act Rule 239T are defined as ''qualified purchasers'' under Section 18(b)(3) of the Securities Act and thereby such eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP are considered ''covered securities'' under Section 18 of the Securities Act and exempt from state blue sky laws.[28]

B. Exchange Act Rule 12a–10T and Rule 12h–1(h)T

In January 2009, we also adopted two Interim Final Temporary Rules relating to Exchange Act registration of eligible CDS that are or have been issued or cleared by a Registered or Exempt CCP. Exchange Act Rule 12a–10T exempts eligible CDS that are or have been issued or cleared by a Registered or Exempt CCP from the provisions of Section 12(a) of the Exchange Act under certain conditions.[29] Exchange Act Rule 12h–1(h)T exempts eligible CDS that are or have been issued or cleared by a Registered or Exempt CCP from the provisions of Section 12(g) of the Exchange Act under certain conditions.[30]

C. Trust Indenture Act Rule 4d–11T

We also adopted a rule under Section 304(d) of the Trust Indenture Act that exempts any eligible CDS, as defined in Securities Act Rule 239T and offered and sold in reliance on Securities Act Rule 239T, from having to comply with the provisions of the Trust Indenture Act.[31]

III. Amendment of Expiration Date of Interim Final Temporary Rules

In January 2009, we adopted the interim final rules on a temporary basis until September 25, 2009 because we anticipated that this date would provide us with adequate time to evaluate the availability of the exemptions applicable to CDS CCPs and non-excluded CDS, and whether any conditions or provisions of such

[22] *See* Section III, *infra,* for a discussion of why the extension of time is necessary.

[23] *See* 17 CFR 230.239T(d).

[24] For purposes of Securities Act Rule 239T, ''eligible contract participant'' has the same meaning as in Section 1a(12) of the Commodity Exchange Act (the ''CEA''), as in effect on the date of adoption of Rule 239T, except that the term does not include a person who is an ''eligible contract participant'' pursuant to Section 1a(12)(C) of the CEA. 17 CFR 230.239T(a)(2).

[25] We note that among the conditions of the exemptions, or representations in the exemptive requests on which we are relying, from clearing registration are that: (1) Information is available about the terms of the CDS, the creditworthiness of the CCP or any guarantor, and the clearing and settlement process for the CDS; and (2) the reference entity, the issuer of the reference security, or the reference security is one of the following: an entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available; a foreign private issuer that has securities listed outside the United States and has its principal trading market outside the United States; a foreign sovereign debt security; an asset-backed security, as defined in Regulation AB [17 CFR 229.1100], issued in a registered transaction with publicly available distribution reports; an asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac or the Government National Mortgage Association; or indexes in which 80 percent or more of the index's weight is comprised of these reference entities or reference securities. *See, e.g.,* Exchange Act Release No. 59527, *supra* Note 10.

[26] 17 CRF 230.239T(c).

[27] This provision is similar to the condition in the Securities Act exemption in Rule 238 for standardized options [17 CFR 230.238] and in Securities Act Section 2(a)(3) [15 U.S.C. 77b(a)(3)] relating to security futures products.

[28] 17 CFR 230.146(c)T. State securities regulation of covered securities generally is limited under Section 18(b). Under Section 18(b)(3), covered securities are securities offered and sold to qualified purchasers, as defined by the Commission.

[29] 15 U.S.C. 78l(a).

[30] 17 CFR 240.12h–1(h)T; 15 U.S.C. 78l(g).

[31] Rule 4d–11T. The Trust Indenture Act applies to debt securities sold through the use of the mails or interstate commerce. Section 304 of the Trust Indenture Act exempts from the Act a number of securities and transactions. Section 304(a) of the Trust Indenture Act exempts securities that are exempt under Securities Act Section 3(a), but does not exempt from the Trust Indenture Act securities that are exempt by Commission rule. Accordingly, while Securities Act Rule 239T exempts the offer and sale of eligible CDS satisfying certain conditions from all the provisions of the Securities Act (other than Section 17(a)), the Trust Indenture Act would continue to apply.

exemptions should be modified. At the time we adopted the Interim Final Temporary Rules, we indicated that we could act to extend the expiration date of such rules.[32]

We have now determined that it is necessary to extend the expiration date of the Interim Final Temporary Rules for the following reasons. First, we adopted the interim final rules to foster the development of CCPs by providing exemptions from certain regulatory provisions that might otherwise prevent them from engaging in such activities in the manner contemplated by the exemptive orders. To date, there has been only one CCP (ICE Trust) that has begun to clear and settle CDS transactions in the U.S. and two CCPs (ICE Europe and Eurex) that have begun to clear and settle CDS transactions in Europe. Extending the expiration date of our Interim Final Temporary Rules would not only allow ICE Trust, ICE Europe and Eurex to continue to clear and settle CDS transactions, it would also enable other CCPs to start clearing and settling CDS transactions in the manner contemplated by the exemptive orders. Competition among CCPs clearing CDS transactions could give participants more choice for their trading needs and may reduce clearing fees.[33] In addition, the extension would give us more time to evaluate the rule and assess its effect on the CDS market and the market participants. As reflected in the CPSS–IOSCO Recommendations, our fellow regulators around the world are also thinking about how to address the risks associated with the central clearing of OTC derivatives, and this remains an open and current topic of discussion for all securities regulators. Finally, Treasury has delivered financial regulatory reform proposals to Congress, and several bills to regulate derivatives and the derivatives markets have been introduced in Congress.

Absent an exemption, the offer and sale of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP may have to be registered under the Securities Act, the eligible CDS that have been so issued or cleared may have to be registered as a class under the Exchange Act, and the provisions of the Trust Indenture Act may need to be complied with. We believe that the Interim Final Temporary Rules have facilitated and anticipate that they will continue to facilitate the use by eligible contract participants of CDS CCPs. Absent an extension of the expiration date of the interim final rules, we believe that the CCPs would not be able to operate in the manner contemplated by the exemptive orders. We note that the expiration dates of certain of these exemptive orders currently extend until April 23, 2010. We are, therefore, adopting amendments to each of the interim final rules to extend the expiration date of the rules to November 30, 2010. Extending the expiration dates for this length of time will allow us to continue to monitor the development and operation of CCPs in the CDS market under the current, evolving regulatory and legislative environment.

IV. Certain Administrative Law Matters

Section 553(b) of the Administrative Procedure Act (''APA'')[34] generally requires an agency to publish notice of a proposed rule making in the **Federal Register**. This requirement does not apply, however, if the agency ''for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''[35] The Commission finds good cause to act immediately to extend the expiration date of the Interim Final Temporary Rules. When we adopted the rules in January of this year, we sought sufficient time to evaluate the appropriateness of the exemptions and the role of CCPs in the CDS market. Since that time, we have granted orders to four additional CDS CCPs exempting them from the requirement to register as a clearing agency under Section 17A of the Exchange Act. Two of these orders were granted as recently as July 2009, and one CCP has started to clear CDS transactions in the U.S. and two have begun clearing CDS in Europe. In addition, there have been a number of recent and still developing legislative and regulatory initiatives relating to the regulation of derivatives, including CDS. Finally, we note that commenters had an opportunity to comment on the length of the temporary rules in January of this year and that this extension is of a limited duration. Therefore, we believe there is good cause to extend the exemption until November 30, 2010 and find that notice and solicitation of comment on the extension to be impracticable, unnecessary, or contrary to the public interest.[36]

The APA also generally requires that an agency publish an adopted rule in the Federal Register 30 days before it becomes effective.[37] However, this requirement does not apply if the agency finds good cause not to delay the effective date.[38] For similar reasons to those explained above, the Commission finds good cause not to delay the effective date.

V. Paperwork Reduction Act

The Interim Final Temporary Rules do not impose any new ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA''),[39] nor do they create any new filing, reporting, recordkeeping, or disclosure reporting requirements for a CCP that is or will be issuing or clearing eligible CDS. Accordingly, we did not submit the Interim Final Temporary Rules to the Office of Management and Budget for review in accordance with the PRA.[40] We requested comment on whether our conclusion that there are no collections of information is correct, and we did not receive any comment. The extension of the expiration dates does not change our analysis.

VI. Cost-Benefit Analysis

In January 2009, we adopted the Interim Final Temporary Rules under the Securities Act, the Exchange Act and the Trust Indenture Act that exempt eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP and offered and sold only to eligible contract participants from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provision, as well as from the registration requirements under Section

[32] *See* Section III of Exchange Act Release No. 59246 (Jan. 14, 2009).

[33] *See* Harrington and Leising, *supra* note 15 (quoting Theo Lubke, an official with the Federal Reserve Bank of New York responsible for the central bank's efforts to curb risk in the CDS market, as stating that ''A competitive [CCP clearing] environment, at least in the short run, is beneficial. We don't want the first mover to be the winner just because they're the first mover. We would like to see real choice in the market for a period of time to determine which is the better mousetrap.''). *See also, Financial Services: Cost of Trading Going Down, Survey Finds,* Europolitics (July 17, 2009) (citing European Commissioner Charlie McCreevy, ''I particularly welcome the [European Commission] study's findings concerning the decreases in costs for trading and clearing and to some extent also for settlement services since 2006. This confirms the positive impact on competition of the Markets in Financial Instruments Directive and the code of conduct on clearing and settlement.'').

[34] 5 U.S.C. 553(b).

[35] 5 U.S.C. 553(b)(B).

[36] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rule amendment to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a Federal agency finds that notice and public comment are ''impractical, unnecessary or contrary to the public interest,'' a rule ''shall take effect at such time as the Federal agency promulgating the rule determines'').

[37] 5 U.S.C. 553(d).

[38] 5 U.S.C. 553(d)(3).

[39] 44 U.S.C. 3501 *et seq.*

[40] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

12 of the Exchange Act and from the provisions of the Trust Indenture Act. The Interim Final Temporary Rules were intended to facilitate the operation of one or more CCPs to act as a clearing agency in the CDS market to reduce some of the risks in the CDS market. Today, we are adopting amendments to such rules to extend their expiration date to November 30, 2010.

Since the adoption of the Interim Final Temporary Rules, one CCP (ICE Trust) has been actively engaged as a CCP in clearing CDS transactions in the U.S. in accordance with terms of the exemptive orders, and two other CCPs (ICE Europe and Eurex) have begun clearing CDS transactions in Europe. In addition, a number of legislative initiatives relating to the regulation of derivatives, including CDS, have been introduced by members of Congress and recommended by the United States Department of the Treasury.[41] Extending the expiration dates of the Interim Final Temporary Rules for this length of time will allow us to continue to monitor the development and operation of CCPs in the CDS market under the current, evolving regulatory and legislative environment.

A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations of a single entity, or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller to make payment under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset or insure against risk in their fixed-income portfolios, to take synthetic positions in bonds or in segments of the debt market as represented by an index, or to capitalize on the volatility in credit spreads during times of economic uncertainty. In recent years, CDS market volumes have rapidly increased.[42] This growth has coincided with a significant rise in the types and number of entities participating in the CDS market.[43]

In a CCP arrangement, both parties entering a CDS novate their trades to the CCP, and the CCP stands in as the counterparty to all parties of the CDS it clears. Through this novation process, the counterparty risk of a CDS is effectively concentrated in the CCP.

A. Benefits

We are extending the termination date of the Interim Final Temporary Rules that provide exemptions from certain provisions of the Securities Act, the Exchange Act and the Trust Indenture Act, subject to certain conditions described in the CCP exemptive orders and in the exemptions themselves to further facilitate the operation of CCPs in the CDS market. The conditions and representations in the CCP exemptive orders and exemptions require that information be available about the terms of the CDS, the creditworthiness of the CCP or any guarantor, and the clearing and settlement process for the CDS. Additionally, the conditions require that financial information about the reference entity, the issuer of the reference security, or the reference security be publicly available. We believe that the Interim Final Temporary Rules and the exemptions under the Exchange Act, have facilitated and we anticipate will continue to facilitate the operation of CCPs[44] while enabling us to provide oversight to the non-excluded CDS market.[45] We believe that the operation of at least one CCP over the last six months in accordance with our exemptions has increased transparency,[46] increased available information about exposures to particular reference entities or reference securities,[47] and reduced risks to participants in the market for CCP-cleared CDS.[48] Not extending the termination date could cause significant disruptions in this market. Therefore, we believe this extension provides important benefits.

Absent an exemption, the offer and sale of eligible CDS that are and will be issued or cleared by a Registered or Exempt CCP would have to be registered under the Securities Act, the eligible CDS that are or have been issued or cleared by a Registered or Exempt CCP would have to be registered as a class under the Exchange Act, and the provisions of the Trust Indenture Act would apply. We believe that the Interim Final Temporary Rules exempting the registration of eligible CDS issued or cleared by a Registered or Exempt CCP under certain conditions have facilitated and we anticipate will continue to facilitate the use by eligible contract participants of CDS CCPs. Without also exempting the offers and sales of eligible CDS issued or cleared by a Registered or Exempt CCP from the registration requirements of the Securities Act and the Exchange Act and the provisions of the Trust Indenture Act, we believe that the CCPs would not be able to operate in the manner contemplated by the exemptive orders.

The interim final temporary exemptions treat eligible CDS issued or cleared by a Registered or Exempt CCP under the Securities Act and the Exchange Act in the same manner as certain other types of derivative contracts, such as security futures products and standardized options.[49] A Registered or Exempt CCP issuing or clearing eligible CDS benefits from the temporary exemptions because it does not have to file registration statements with us covering the offer and sale of the eligible CDS. The registration form most applicable to a CCP is a Form S–20, which is the form that is used by options clearing houses that do not qualify for our exemption in Securities Act Rule 238[50] from registering the offer and sale of standardized options. If a CCP is not required to register the offer and sale of eligible CDS (on Form S–20, for example), it would not have to incur the costs of such registration, including legal and accounting costs. Some of these costs, of course, such as the costs of obtaining audited financial statements, may still be incurred as a result of the operations of the entity as a CCP and the regulatory oversight of the central counterparty operations. In addition, if any of the CCPs are entities that are subject to the periodic reporting requirements of the Exchange Act, the cost of filing a registration statement covering the eligible CDS would be lessened further as the information regarding the CCP already would be prepared. The availability of exemptions under the Securities Act, the Exchange

[41] *See* Section I, *supra,* for additional discussion of developments in this area since the adoption of the Interim Final Temporary Rules.

[42] *See* Semiannual OTC derivatives statistics at end-December 2008, Bank for International Settlements (''BIS''), available at *http://www.bis.org/statistics/otcder/dt1920a.pdf.*

[43] CDSs were initially created to meet the demand of banking institutions looking to hedge and diversify the credit risk attendant with their lending activities. However, other financial institutions such as insurance companies, pension funds, securities firms and hedge funds have entered the CDS market.

[44] *See* Karen Brettell, *Banks to submit 95 pct of eligible CDS for clearing* (Sep. 1, 2009), available at *http://www.reuters.com/article/euRegulatoryNews/idUSN0150814420090901?pageNumber=1&virtualBrandChannel=10522.*

[45] *See e.g.,* Exchange Act Release No. 59527, *supra* Note 10 (our exemptions require that the CCPs provide us with, among other things, access to conduct on-site inspections of facilities, records and personnel).

[46] *See* Testimony of Mark Lenczowski, *supra* Note 12.

[47] *See e.g.,* Exchange Act Release No. 59527, *supra* Note 26.

[48] *See* IntercontinentalExchange, *supra* Note 13.

[49] *See, e.g.,* Securities Act Section 3(a)(14) [15 U.S.C. 77c(a)(14)], Securities Act Rule 238 [17 CFR 230.238]; Exchange Act Section 12(a) [15 U.S.C. 78*l*], and Exchange Act Rule 12h–1(d) and (e) [17 CFR 240.12h–1(d) and (e)].

[50] 17 CFR 230.238.

Act, and the Trust Indenture Act also would mean that CCPs would not incur the costs of preparing disclosure documents describing eligible CDS and from preparing indentures and arranging for the services of a trustee.

B. Costs

The Interim Final Temporary Rules exempting offers and sales of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP have facilitated and we anticipate will continue to facilitate the use by eligible contract participants of CDS CCPs that are the subject of exemptive orders at some costs to the CCP or investors.

Absent an exemption, a CCP may have to file a registration statement covering the offer and sale of the eligible CDS, may have to satisfy the applicable provisions of the Trust Indenture Act, and may have to register the class of eligible CDS that it has issued or cleared under the Exchange Act, which would provide investors with civil remedies in addition to antifraud remedies. While a CCP registration statement covering eligible CDS (or the offer and sale of such eligible CDS) may provide certain information about the CCP, CDS contract terms, and the identification of reference entities or reference securities, it would not necessarily provide the type of information necessary to assess the credit risk of the reference entity or reference security. Further, while a CCP registration statement would provide information to the CDS market participants, as well as to the market as a whole, a condition of the clearing agency exemption in the exemptive orders is that the CCPs make their audited financial statements and other information about themselves publicly available.

We recognize that a consequence of the exemptions has been and will continue to be the unavailability of certain remedies under the Securities Act and the Exchange Act and certain protections under the Trust Indenture Act. While an investor would be able to pursue an antifraud action in connection with the purchase and sale of eligible CDS under Exchange Act Section 10(b),[51] it would not be able to pursue civil remedies under Sections 11 or 12 of the Securities Act.[52] We could still pursue an antifraud action in the offer and sale of eligible CDS issued or cleared by a CCP.[53] We believe that the incremental costs from the extension of the expiration date of the Interim Final Temporary Rules will be minimal because the amendments are merely an extension of such Interim Final Temporary Rules and such extension will not affect the information and remedies available to investors as a result of the Interim Final Temporary Rules.

VII. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[54] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 2(b)[55] of the Securities Act and Section 3(f)[56] of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation.

The Interim Final Temporary Rules we are extending today exempt eligible CDS issued or cleared by a Registered or Exempt CCP from all provisions of the Securities Act, other than the Section 17(a) antifraud provision, as well as from the registration requirements under Section 12 of the Exchange Act and the provisions of the Trust Indenture Act. Because these interim final temporary exemptions are available to any Registered or Exempt CCP offering and selling eligible CDS, we do not believe that the exemptions impose a burden on competition. Although only one CCP is currently clearing and settling CDS in the U.S., we believe the extension will increase the opportunity for other CCPs to compete in the marketplace. We also believe that the ability to settle CDS through CCPs has improved and we anticipate will continue to improve the transparency of the CDS market and provide greater assurance to participants as to the capacity of the eligible CDS counterparty to perform its obligations under the eligible CDS. ICE Trust, for example, makes available on its Web site information about open interests, or net exposure, volume and pricing of CDS transactions. We believe that increased transparency in the CDS market could help to decrease further market turmoil and thereby facilitate the capital formation process.

VIII. Regulatory Flexibility Act Certification

The Commission certified pursuant to 5 U.S.C. 605(b) that the Interim Final Temporary Rules would not have a significant economic impact on a substantial number of small entities. The Interim Final Temporary Rules exempt eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP. None of the entities that are eligible to meet the requirements of the exemption from registration under Section 17A is a small entity. We received no comments on the certification.

IX. Statutory Authority and Text of the Rules and Amendments

The amendments described in this release are being adopted under the authority set forth in Sections 18, 19 and 28 of the Securities Act; Sections 12(h), 23(a) and 36 of the Exchange Act; and Section 304(d) of the Trust Indenture Act.

List of Subjects in 17 CFR Parts 230, 240 and 260

Reporting and recordkeeping requirements, Securities.

Text of the Rules and Amendments

■ Accordingly, we are temporarily amending 17 CFR parts 230, 240, and 260 as follows and the expiration date for the interim final temporary rules published January 22, 2009 (74 FR 3967) is extended from September 25, 2009, to November 30, 2010.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§§ 230.146 and 230.239 [Amended]

■ 2. In § 230.146(c)T, in the last sentence, remove the words ''September 25, 2009'' and add, in their place, the words ''November 30, 2010''.

■ 3. In § 230.239T(e), remove the words ''September 25, 2009'' and add, in their place, the words ''November 30, 2010''.

[51] 15 U.S.C. 78j(b).

[52] 15 U.S.C. 77k and 77*l*.

[53] *See* 15 U.S.C. 77q and 15 U.S.C. 78j(b).

[54] 15 U.S.C. 78w(a)(2).

[55] 15 U.S.C. 77b(b).

[56] 15 U.S.C. 78c(f).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 4. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

§§ 240.12a–10T and 240.12h–1 [Amended]

■ 5. In § 240.12a–10T(b), remove the words ''September 25, 2009'' and add, in their place, the words ''November 30, 2010''.

■ 6. In § 240.12h–1(h)T, in the last sentence, remove the words ''September 25, 2009'' and add, in their place, the words ''November 30, 2010''.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

■ 7. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

§ 260.4d–11T [Amended]

■ 8. Section 260.4d–11T is amended by removing the words ''September 25, 2009'' and adding, in their place, the words ''November 30, 2010'' in the last sentence.

September 14, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–22389 Filed 9–16–09; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

[Docket No. FDA–2009–N–0665]

New Animal Drugs; Fomepizole

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the original approval of an abbreviated new animal drug application (ANADA) filed by Synerx Pharma, LLC. The ANADA provides for the veterinary prescription use of fomepizole injectable solution as an antidote for ethylene glycol (antifreeze) poisoning in dogs.

DATES: This rule is effective September 17, 2009.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, e-mail: *john.harshman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Synerx Pharma, LLC, 100 N. State St., Newtown, PA 18940–2048, filed ANADA 200–472 that provides for veterinary prescription use of Fomepizole for Injection as an antidote for ethylene glycol (antifreeze) poisoning in dogs. Synerx Pharma, LLC's Fomepizole for Injection is approved as a generic copy of Paladin Laboratories' ANTIZOL–VET (fomepizole), approved under NADA 141–075. The ANADA is approved as of 2009, and the regulations are amended in 21 CFR 522.1004 to reflect the approval.

In addition, Synerx Pharma, LLC, is not currently listed in the animal drug regulations as a sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to add entries for this sponsor.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), alphabetically add an entry for ''Synerx Pharma, LLC''; and in the table in paragraph (c)(2), numerically add an entry for ''068882'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* *
Synerx Pharma, LLC, 100 N. State St., Newtown, PA 18940–2048	068882
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* *	* * *
068882	Synerx Pharma, LLC, 100 N. State St., Newtown, PA 18940–2048
* *	* * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 4. In § 522.1004, revise paragraph (b) to read as follows:

§ 522.1004 Fomepizole.

* * * * *

(b) *Sponsors. See* Nos. 068727 and 068882 in § 510.600(c) of this chapter.

* * * * *

Dated: September 14, 2009.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E9–22384 Filed 9–16–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Parts 22 and 51

[Public Notice 6650]

RIN 1400–AC39

Passport Procedures—Amendment to Expedited Passport Processing Regulation

AGENCY: Bureau of Consular Affairs, State Department.

ACTION: Final Rule.

SUMMARY: This rule revises the expedited passport process and changes the definition of expedited passport processing from three business days, beginning when the application arrives at a passport agency or when the request for expedited processing is approved, to the number of business days published on the Department's Web site at *http://www.travel.state.gov.* This change ensures that the Department can continue to offer this service consistent with its regulations while maintaining sufficient flexibility to adapt to fluctuations in passport demand. It also ensures that the public can easily determine the current standards for expedited passport processing.

DATES: September 17, 2009.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Susan M. Bozinko, Bureau of Consular Affairs, Passport Services, Division of Legal Affairs, U.S. Department of State, Washington, DC 20037 or e-mailed at *BozinkoSM@state.gov.*

SUPPLEMENTARY INFORMATION: The Department published an interim final rule, Public Notice 5888, Vol. 72 **Federal Register** No. 158, amending Parts 22 and 51 of Title 22 of the Code of Federal Regulations, along with a request for comments. The interim final rule was implemented to change the definition of expedited passport processing. The Department's reasons for implementing the change were discussed in detail in the interim final rule. This final rule is unchanged from the interim final rule. Further, this final rule makes a conforming amendment to the Schedule of Fees for Consular Services to reflect a change to the regulation affected by this rule.[1]

Analysis of Comments

Eight comments were submitted in response to the request for comments. Two were unsolicited business offers and one was a test e-mail to ascertain the accessibility of the e-mailbox being used. Five were substantive comments, including comments submitted by the American Immigration Lawyers Association (AILA).

Notice to the Public

Three individuals expressed concern that the publication of the expedited passport processing standard on the Department's Web site would not provide sufficient notice of the standard to the public.

The Department indicates on its Web site the date on which any change to the number of business days constituting expedited passport processing becomes effective. Moreover, the number of business days that constitutes expedited passport processing is a matter of policy determined by the Department. Under 5 U.S.C. 553(b), statements of general agency policy are not subject to the requirement of notice and comment rulemaking. Thus, any modifications of the policy regarding what constitutes expedited passport processing, including changes to the number of business days that constitute expedited processing, are not subject to notice and comment rulemaking.

While one commenter felt that the link to processing times was too difficult to locate, it should be noted that the link appears at the top of the home page for passport information and as such, is readily accessible to anyone seeking information on U.S. passports. In fact, the *http://www.travel.state.gov* Web site was designed with ease of use for the public as a primary goal. The Department believes the current Web site design is sufficient to meet the public's needs.

Nature of Service

Two commenters stated that Web site publication of the expedited processing standard raised the possibility that applicants paying the expedite fee would not receive the same service and that they would not be able to quickly obtain a passport in case of emergency.

Applicants who request expedited service and pay the expedited processing fee can expect to receive expedited processing within the context of circumstances affecting passport application processing times. Changes to the expedited processing time published on the Web site are intended to reflect those circumstances. In addition, citizens in emergency situations have always been and continue to be a priority to the Department. Applicants with urgent travel needs may apply for expedited processing either by mail or in person at a passport agency.

Refunds

One commenter suggested that the Department should provide a waiver of the expedited processing fee or a refund for failure to process expedited passport applications within the time published on the Department's Web site. The Department's regulations at 22 CFR 51.53 already provide for a refund of the expedited processing fee in cases where the Department does not provide expedited processing as defined in 22 CFR 51.56. Applicants seeking such a refund of the expedite fee must submit a written refund request to the Department. Such requests may be submitted to the Department by mail at the address provided on the Department's Web site, *http://www.travel.state.gov,* or by e-mail at the address provided on *http://www.travel.state.gov.* A link to the Department's e-mail portal for expedite fee refund requests is included on the Web site.

Procedural Issues

One commenter said the interim final rule was procedurally deficient because it sought to incorporate by reference information from the Department's Web site in the regulation. The commenter objected to the Department's alleged failure to follow the procedure for incorporation by reference. However, the rules applying to incorporation by reference—contained in 1 CFR Part 51, which implements 5 U.S.C. 552 (*see* the paragraph following 5 U.S.C. 552(a)(1)(E))—normally apply when a rule imposes a burden or regulatory standard on the public. This rule does not regulate the public; rather, it sets the standard for agency conduct. For this reason, the procedures relating to incorporation by reference do not apply to this rule.

[1] A final rule reorganizing and updating the regulations relating to passports, and which incorporated the interim final rule redefining expedited passport processing, was published at 72 FR 64930 (Nov. 19, 2007). As a result of the reorganization implemented by that rule, the regulation affected by this final rule is now at 22 CFR 51.56(b).

Regulatory Findings

Administrative Procedure Act

The Department published this rule as an interim final rule, with a 60-day provision for post-promulgation public comments. The comment period closed on October 15, 2007.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and, by approving it, certifies that this rule is not expected to have a significant economic impact on a substantial number of small entities because only individuals can apply for passports.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the U.S.-based companies to compete with foreign based companies in domestic and import markets.

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f). In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations, in conjunction with a domestic agency, that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory and philosophy and principles set forth in Executive Order 12866.

OMB does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f).

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 35.

List of Subjects

22 CFR Part 22

Consular services, Fees, Passports and Visas.

22 CFR Part 51

Administrative practice and procedure, Drug traffic control, Passports and Visas.

■ Accordingly, for the reasons set forth above, Title 22, Parts 22 and 51 are amended as follows:

PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICES

■ 1. The authority citation for Part 22 continues to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; Public Law 105–277, 112 Stat. 2681 *et seq.*; Public Law 108–447, 118 Stat. 2809 *et seq.*; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

■ 2. Section 22.1 is amended by revising entry 3 of the table to read as follows:

§ 22.1 Schedule of Fees

* * * * *

SCHEDULE OF FEES FOR CONSULAR SERVICES

Item No.	Fee
Passport and Citizenship Services	
* * * * * * *	
3. Expedited Service: Passport processing within expedited processing period published on the Department's Web site (22 CFR 51.56(b)) (not applicable abroad)	$60
* * * * * * *	

PART 51—PASSPORTS

■ 3. The authority citation for Part 51 continues to read as follows:

Authority: 22 U.S.C. 211a, 213, 2651a, 2671(d)(3), 2714, and 3926; 31 U.S.C. 9701; E.O. 11295, 3 CFR, 1966–1970 Comp. p. 570; Sec. 236 Public Law 106–113, 113 stat. 1501A–430; 18 U.S.C. 1621(a)(2); 42 U.S.C. 652, as amended by Sec. 370 Public Law 104–193 and Sec. 7303 Public Law 109–171.

■ 4. Section 51.56(b) is revised to read as follows:

§ 51.56 Expedited passport processing.

* * * * *

(b) Expedited passport processing shall mean completing processing within the number of business days published on the Department's Web site, *http://www.travel.state.gov,* commencing when the application reaches a Passport Agency or, if the application is already with a Passport Agency, commencing when the request for expedited processing is approved. The processing will be considered completed when the passport is ready to be picked up by the applicant or is mailed to the applicant, or a letter of passport denial is transmitted to the applicant.

* * * * *

Dated: September 9, 2009.

Janice L. Jacobs,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E9–22417 Filed 9–16–09; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9461]

RIN 1545–BH99

Information Reporting for Discharges of Indebtedness

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to information returns for cancellation of indebtedness by certain entities under section 6050P of the Internal Revenue Code. The final regulations will avoid premature information reporting from certain businesses and will reduce the number of information returns required to be filed. The final regulations will impact certain businesses required to file information returns under the existing regulations.

DATES: *Effective Date:* These regulations are effective on September 17, 2009.

Applicability Date: For dates of applicability, *see* § 1.6050P–1(h).

FOR FURTHER INFORMATION CONTACT: Barbara Pettoni at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 6050P relating to information reporting for cancellation of indebtedness by certain entities. In general, section 6050P requires certain entities to file information returns with the IRS, and to furnish information statements to debtors, reporting discharges of indebtedness of $600 or more. The amendments in this document will avoid premature reporting of cancellation of indebtedness income by reducing the information reporting burden on certain entities that were not originally within the scope of section 6050P. The amendments will also protect debtors from receiving information returns that prematurely report cancellation of indebtedness income from such entities.

Final and temporary regulations (TD 9430) were published in the **Federal Register** (73 FR 66539) on November 10, 2008. On the same date, a notice of proposed rulemaking (REG–118327–08) cross-referencing to temporary regulations was published in the **Federal Register** (73 FR 66568). A correction to final and temporary regulations (73 FR 75326) and a correcting amendment (73 FR 75326) to the regulations were published in the **Federal Register** on December 11, 2008. Only one commenter responded to the proposed regulations, presenting oral comments at a public hearing on the proposed regulations at the IRS on March 13, 2009, as well as written comments. After considering these oral and written comments, the IRS and the Treasury Department are adopting the proposed regulations without change and removing the corresponding temporary regulations.

Explanation of Comments

The sole commenter agrees with the amendments in the proposed regulations to reduce the information reporting burden on certain entities that were not originally within the scope of section 6050P and thereby avoid premature reporting of cancellation of indebtedness income. The commenter, however, requested additional guidance on several other areas addressed in the existing regulations under section 6050P including: (1) The meaning of ''stated principal'' as used in § 1.6050P–1(c) and (d)(3) when applied to transactions involving entities that acquire a loan from another person; (2) what information, if any, must be provided to a debtor prior to filing Form 1099–C, ''Cancellation of Debt''; (3) what constitutes significant bona fide collection activity under § 1.6050P–1(b)(2)(iv)(A); and (4) how to report the discharge of a debt that has been reduced to judgment. These other areas are beyond the scope of the proposed regulations and are therefore not addressed in these final regulations. The Treasury Department and the IRS will consider the concerns raised in these comments in determining whether to issue additional guidance under section 6050P.

No revisions were made to the proposed and temporary regulations or the corrections to those regulations. Accordingly, this Treasury decision adopts the proposed regulations without substantive change and removes the corresponding temporary regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Barbara Pettoni, Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 1

Income tax, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entry for § 1.6050P–1T to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

■ **Par. 2.** Section 1.6050P–0 is amended as follows:

■ 1. The introductory text is revised.

■ 2. The entry for § 1.6050P–1(b)(2)(v) is added.

■ 3. The entry for § 1.6050P–1T is removed.

The revisions and addition read as follows:

§ 1.6050P–0 Table of contents.

This section lists the major captions that appear in §§ 1.6050P–1 and 1.6050P–2.

§ 1.6050P–1 Information reporting for discharges of indebtedness by certain entities.

* * * * *

(b) * * *

(2) * * *

(v) Special rule for certain entities required to file in a year prior to 2008.

* * * * *

Par. 3. Section 1.6050P–1 is amended by revising paragraphs (b)(2)(i)(H), (b)(2)(v) and (h)(1) to read as follows:

§ 1.6050P–1 Information reporting for discharges of indebtedness by certain entities.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(H) In the case of an entity described in section 6050P(c)(2)(A) through (C),

the expiration of the non-payment testing period, as described in § 1.6050P–1(b)(2)(iv).

* * * * *

(v) *Special rule for certain entities required to file in a year prior to 2008.* In the case of an entity described in section 6050P(c)(1)(A) or (c)(2)(D) required to file an information return in a tax year prior to 2008 due to an identifiable event described in paragraph (b)(2)(i)(H) of this section, and who failed to so file, the date of discharge is the first event, if any, described in paragraphs (b)(2)(i)(A) through (G) of this section that occurs after 2007.

* * * * *

(h) * * *

(1) *In general.* The rules in this section apply to discharges of indebtedness after December 21, 1996, except paragraphs (e)(1) and (e)(3) of this section, which apply to discharges of indebtedness after December 31, 1994, except paragraph (e)(5) of this section, which applies to discharges of indebtedness occurring after December 31, 2004, and except paragraphs (b)(2)(i)(H) and (b)(2)(v) of this section, which apply to discharges of indebtedness occurring after November 10, 2008.

* * * * *

■ **Par. 4.** Section 1.6050P–1T is removed.

Approved: August 28, 2009.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Michael F. Mundaca,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–22354 Filed 9–16–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2009–0782]

RIN 1625–AA00

Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor from September 2, 2009, through September 26, 2009. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after fireworks events. This rule will establish restrictions upon and control movement of vessels in the specified area immediately prior to, during, and immediately after the fireworks events. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port Lake Michigan.

DATES: The regulations in 33 CFR 165.931 will be enforced during the times listed in the **SUPPLEMENTARY INFORMATION** from September 2, 2009, to September 26, 2009.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail BM1 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI; telephone 414–747–7154, e-mail *Adam.D.Kraft@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL, as listed in 33 CFR 165.931, for the following events, dates, and times:

(1) *Navy Pier Wednesday Fireworks:* On September 2, 2009, from 9:15 p.m. through 9:45 p.m.; on September 16, 2009, from 9 p.m. through 9:30 p.m.;

(2) *Navy Pier Friday Fireworks:* On September 18, 2009, from 8:45 p.m. through 9:20 p.m.; on September 25, 2009, from 8:45 p.m. through 9:20 p.m.;

(3) *Navy Pier Saturday Fireworks:* On September 5, 2009, from 10 p.m. through 10:40 p.m.; on September 19, 2009, from 8:45 p.m. through 9:20 p.m.; on September 26, 2009, from 8:45 p.m. through 9:20 p.m.; and

(4) *Navy Pier Sunday Fireworks;* On September 6, 2009, from 9:15 p.m. through 9:45 p.m.

All vessels must obtain permission from the Captain of the Port or a designated representative to enter, move within, or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or the designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931 Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL. and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register,** the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port or the designated representative may be contacted via VHF–FM Channel 16.

Dated: August 26, 2009.

L. Barndt,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. E9–22359 Filed 9–16–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 12 and 15

[USCG–2007–27761]

RIN 1625–AB16

Large Passenger Vessel Crew Requirements

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule finalizes, with minor non-substantive changes, the amendments to Coast Guard regulations on merchant mariner documentation which were published as an interim rule with request for comments on April 24, 2007. These amendments implement section 3509 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Warner Act), which allows for the issuance of merchant mariner's documents (MMDs), (which have since been consolidated by the Coast Guard into merchant mariner credentials (MMCs)), to certain non-resident aliens for service in the steward's departments of U.S. flag large passenger vessels endorsed for coastwise trade. Prior to publication of the interim rule, the regulations prohibited the Coast Guard from issuing MMDs, which are required for service on large passenger vessels, to non-resident aliens. Specifically, this rule finalizes the amendments to Coast Guard regulations allowing the Coast Guard to issue MMCs to qualified non-resident aliens who are authorized to be employed in the United States, the amendments setting the requirements these aliens must meet in order to qualify for MMCs, and the requirements

for the large passenger vessels that may choose to hire these aliens. This rule only applies to large passenger vessels, as defined under the Warner Act.

DATES: This final rule is effective on October 19, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2007–27761 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov*, inserting USCG–2007–27761 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mayte Medina, Coast Guard; telephone 202–372–1406, e-mail *Mayte.Medina2@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

DHS Department of Homeland Security
FR Federal Register
GRT Gross register tons
ILO 147 International Labor Organization's Merchant Shipping (Minimum Standards) Convention of 1976
INA Immigration and Nationality Act
MMC Merchant Mariner Credential
NAICS North American Industry Classification System
NCLA Norwegian Cruise Line America
NMC National Maritime Center
NSEERS National Security Entry-Exit Registration System
SBA Small Business Administration
SIU Seafarers International Union
SUP Sailors' Union of the Pacific
TWIC Transportation Worker Identification Credential
U.S.C. United States Code
US–VISIT United States Visitor and Immigrant Status Indicator Technology Program

II. Regulatory History

On April 24, 2007, we published an interim rule with request for comments entitled ''Large Passenger Vessel Crew Requirements'' in the **Federal Register** (72 FR 20278). We received 14 letters commenting on the proposed rule. No public meeting was requested and none was held.

On March 16, 2009, we published a final rule entitled ''Consolidation of Merchant Mariner Credentials (MMCs)'' in the **Federal Register** (74 FR 11196). That final rule reorganized the regulations found in title 46, chapter I, subchapter B, and also consolidated the number of credentials issued to mariners by the Coast Guard. Changes made in that final rule have been included in this document, and are highlighted below in section V. ''Discussion of Comments and Changes.''

III. Background

The discussion of the background that follows largely repeats the discussion of the background and purpose set forth in the interim rule.

Prior to October 17, 2006, § 8103 of title 46 United States Code generally required that unlicensed seamen on documented vessels be of the following status: (a) Citizens of the United States; (b) lawful permanent residents; or (c) foreign nationals enrolled in the United States Merchant Marine Academy. Additionally, no more than 25 percent of such unlicensed seamen could be lawful permanent residents.

On October 17, 2006, Congress enacted the John Warner National Defense Authorization Act for Fiscal Year 2007 (Warner Act), Public Law 109–364, sec. 3509, 120 Stat. 2518. Section 3509 of the Warner Act (46 U.S.C. 8103(k)) amends 46 U.S.C. 8103 to permit large passenger vessels to also employ aliens who are not lawful permanent residents of the United States but who are authorized to work in the United States. The statute maintains a cap so that no more than 25 percent of the unlicensed seamen on any large passenger vessel may be aliens, whether admitted to the United States as lawful permanent residents or otherwise allowed to be employed in the United States. ''Large passenger vessel'' is defined under the Warner Act to mean ''a vessel of more than 70,000 gross tons, as measured under section 14302 of this title, with capacity for at least 2,000 passengers and documented with a coastwise endorsement under chapter 121 of this title.''

The Warner Act also contains the following qualifications and restrictions on non-resident aliens serving as unlicensed seamen on large passenger vessels:

1. Non-resident aliens may not perform watchstanding, engine room duty watch, or vessel navigation functions;

2. Non-resident aliens must be authorized for employment in the United States under the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1101 *et seq.*) (INA), including an alien crewman described in section 101(a)(15)(D)(i) of the INA (8 U.S.C. 1101(a)(15)(D)(i));

3. Non-resident aliens must have been employed for a period of at least one year on a passenger vessel, including a foreign flag passenger vessel, under the same common ownership or control as the U.S. flag vessel they will be working on, as certified by the owner or managing operator of such vessel;

4. Non-resident aliens must have no record of material disciplinary actions during such employment, as verified in writing by the owner or managing operator of such vessel;

5. Non-resident aliens must have successfully completed a United States Government security check of the relevant domestic and international databases, as appropriate, or any other national security-related information or database (which is required for an MMC or Transportation Worker Identification Credential (TWIC));

6. Non-resident aliens must have successfully undergone an employer-conducted background check for which the owner or managing operator provides a signed report that describes the background checks undertaken. The background check must consist of a search of all information that is reasonably and legally available to the owner or managing operator in the seaman's country of citizenship and any other country in which the seaman receives employment referrals or resides. The report must be kept on the vessel and available for inspection, and the information derived from the background check must be made available upon request;

7. Non-resident aliens may not be citizens or temporary or permanent residents of a country designated by the United States as a sponsor of terrorism,

or any other country that the Secretary of Homeland Security, in consultation with the Secretary of State and the heads of other appropriate United States agencies, determines to be a security threat to the United States; and

8. Non-resident aliens may only serve for an aggregate period of 36 months of actual service on all authorized U.S. flag large passenger vessels combined. Once this 36-month limitation has been reached, the MMD (now called an MMC) becomes invalid and the individual's employer must return it to the Coast Guard, and the individual is no longer authorized to be in service in a position requiring an MMD (now called an MMC) on any U.S. flag large passenger vessel.

Under current law, all individuals serving in the steward's department on passenger vessels of 100 gross register tons (GRT) or more must hold an MMC. 46 U.S.C. 8701. The only exception is for entertainment personnel employed for a period of 30 days or less per year, who are exempt from the MMC requirement.

Prior to publication of the interim rule on April 24, 2007, Coast Guard regulations governing the issuance of MMDs (now called MMCs) prohibited the issuance of MMDs (now called MMCs) to non-resident aliens (*see* 46 CFR Part 12). The Coast Guard, through the interim rule, amended its regulations to authorize the issuance of MMDs (now called MMCs) to non-resident aliens authorized to work in the United States who meet the criteria of the Warner Act and the requirements set forth in the rule.

IV. Discussion of Final Rule

This rule finalizes, with minor non-substantive changes, the amendments set forth in the interim rule. A full discussion of the provision of this rule may be found in the ''Discussion of the Interim Rule'' section of the interim rule. 72 FR 20278, at 20280.

V. Discussion of Comments and Changes

We received a total of 14 letters commenting on the proposed rule. One of the comments, discussing marine radio broadcast services, was apparently submitted to the docket in error.

Of the 13 relevant commenters, four essentially argue that foreigners should not be permitted to work on U.S. flag vessels. Three commenters argue that foreigners should be permitted to work on U.S. flag large passenger vessels, and also that the Jones Act should be repealed. Two commenters argue that foreigners should be allowed to work on U.S. flag large passenger vessels because foreign hotel staff on large passenger vessels provide a better level of customer service than U.S. hotel staff.

While the Coast Guard appreciates the countering viewpoints expressed in these comments, none of them discuss the rulemaking. Rather, they discuss issues regarding the appropriateness, fairness and justification for the legislation underlying the rulemaking, *i.e.* section 3509 of the Warner Act. That legislation was enacted by Congress and signed by the President into law. This rulemaking is merely the implementation of that law, and, as such, the viewpoints expressed in these comments are beyond the scope of the rulemaking.

The remaining four commenters discuss, at least in part, the specifics of the rulemaking. Three of these four commenters—from Seafarers International Union (SIU), Transportation Institute, and Norwegian Cruise Line America (NCLA)—support the rulemaking without change.

NCLA owns/operates the only vessels subject to this rulemaking, making NCLA the only vessel owner/operator to which this final rule applies.[1] Their comments indicate that the regulations as issued in the interim rule strike an appropriate balance between flexibility for the vessel owner/operator and safeguards to preserve U.S. interests. NCLA urges that the regulations should be adopted without change in this final rule. We agree with NCLA.

One comment, from the Sailors' Union of the Pacific (SUP), opposes the rulemaking on five grounds: negative consequences to sealift manpower; undermining U.S. maritime security; creating a de facto second register under the U.S. flag; unfair competition; and lack of transparency. We made no changes to the rule based on these comments, which are discussed below.

SUP suggests that this rule will weaken defense readiness by reducing the pool of qualified U.S. mariners necessary to commercially operate military sealift ships, and that it takes away valuable entry-level positions for unlicensed U.S. mariners. Conversely, SIU (one of the other commenters) argues that if the cruise ships impacted by this regulation are re-flagged foreign due to the economic pressures associated with the high turnover of U.S. hotel staff on these vessels, even more U.S. jobs will be lost. Instead of 75 percent of the crew on these vessels being U.S. citizens, none of the crew will be a U.S. citizen if the vessels are re-flagged foreign.

While the Coast Guard appreciates both of these divergent maritime labor viewpoints, they relate to the statute underlying this rulemaking, *i.e.* section 3509 of the Warner Act, and, as noted above, are beyond the scope of this rulemaking.

SUP next suggests that this rulemaking undermines U.S. maritime security because the security standards imposed on non-resident aliens are ''far beneath'' the standards imposed on U.S. mariners. SUP suggests that the aliens who would be allowed to work aboard U.S. large passenger vessels under this rule are exempt from the TWIC requirements, and that the ''real weakness in the rule's security standards is that it depends on unreliable or non-existent information from foreign sources.''

First, it must be clarified that the non-resident aliens who gain employment aboard U.S. large passenger vessels in accordance with this rule are required to obtain TWIC cards, just like any other credentialed U.S. mariner. Section 12.40–5(a) of the interim rule specified that unless otherwise expressly stated, non-resident alien applicants for MMDs (now called MMCs) are subject to all applicable requirements contained in 46 CFR Subchapter B. The final TWIC rule added new sections 10.113, 12.01–11 and 15.415 to 46 CFR Subchapter B. 73 FR 3492. These sections collectively require all credentialed mariners to hold a valid TWIC by April 15, 2009, to be employed or engaged on any U.S. flag vessel.

Furthermore, the TWIC final rule amended 49 CFR 1572.105 to allow a TWIC to be issued to an alien in a lawful nonimmigrant status who has restricted authorization to work in the United States with a C–1/D crewman visa. 49 CFR 1572.105(a)(7)(ii). The C–1/D crewman visa is the most common type of visa that non-resident alien crewmembers have, and it is explicitly referenced in both the statute and the rule as acceptable for issuance of an MMD (now called MMC). To the extent that a non-resident alien crewmember may have something other than a C–1/D visa, there are numerous other lawful immigration statuses listed in 49 CFR 1572.105 allowing for issuance of a TWIC.

Regarding the SUP argument that the non-resident aliens will be subject to lesser security vetting requirements than U.S. mariners, non-resident aliens are subject to not only a government background check at the time of application (including the full security threat assessment done by the

[1] When the interim rule was issued on April 24, 2007, NCLA operated three U.S. flag large passenger vessels in coastwise trade in the Hawaiian Islands. Since that time, they have removed two of those vessels in coastwise trade in the Hawaiian Islands.

Transportation Security Administration when the individual applies for a TWIC), but are also subject to an employer-conducted background check, which must be updated every year that the non-resident alien holds a credential, to search for any changes since the last background check. They are also subject to any immigration background checks required to obtain their lawful immigration status or visa. This is the highest level of security vetting possible within the constraints of section 3509 of the Warner Act, the statute underlying this rulemaking.

Any concerns with respect to the quality of the employer-conducted background check are addressed in §§ 12.40–7(a)(2) and (a)(3) of the rule. Section 12.40–7(a)(2)(ii) requires a review of the available court and police records in the applicant's country of citizenship, and in any other country in which the applicant has resided or received employment referrals for the past 20 years. This is an extensive requirement, and it may include not only criminal arrest and conviction information, but also relevant civil court information such as bankruptcies and lawsuits.

Furthermore, § 12.40–7(a)(3) states that the employer-conducted background check must be conducted ''to the satisfaction of the Coast Guard'' for a credential to be issued. This gives the Coast Guard broad discretion to accept or reject employer-conducted background checks. In fact, NCLA utilizes a company, at significant expense to NCLA, which specializes in foreign criminal background checks. This company has agents who physically search available court and police records at each local foreign jurisdiction where each non-resident alien applicant has resided, received employment referrals, or claimed citizenship. They produce a professionally styled, comprehensive report on each non-resident alien applicant. This is the type of background check that the Coast Guard expects under § 12.40–7(a)(3). Anything less could be rejected with no credential being issued to the applicant.

SUP next suggests that this rulemaking creates a de facto second register under the U.S. flag by allowing the employment of foreign mariners on U.S. vessels who may be paid less and employed under lower standards than U.S. mariners. SUP states, correctly, that neither the statute nor the rule requires non-resident alien mariners to be employed under the same collective bargaining agreement as presently applies to U.S. mariners on the same vessels.

The Coast Guard has no authority to require any vessel owner/operator to employ mariners under a collective bargaining agreement. As long as the vessel owner/operator complies with the provisions of the International Labor Organization's Merchant Shipping (Minimum Standards) Convention of 1976 (ILO 147), as required in section 15.530(b) of the rule, they are under no obligation to provide the same compensation to non-resident aliens as they do to U.S. mariners on these vessels. This issue is discussed in more detail below in the ''Regulatory Planning and Review'' section, under ''Direct Impacts.''

Significantly, compliance with ILO 147 entails compliance with the scope of all the Conventions listed in the Appendix of ILO 147, specifically including social security, medical exams, and repatriation. Moreover, nothing in this rule relieves any vessel owner/operator from compliance with all applicable provisions of 46 U.S.C. Part G, Chapters 101–115, Merchant Seamen Protection and Relief.

SUP next suggests that this rule creates unfair competition by enabling NCLA to compete for crews under different rules than other U.S. flag companies, interfering in the operation of commercial maritime labor markets. Again, this argument relates to the statute underlying the rule, *i.e.*, section 3509 of the Warner Act, which provides that up to 25 percent of the unlicensed seamen on large passenger vessels can be qualified non-resident aliens (limited to hotel staff). This issue is beyond the scope of this rulemaking.

Finally, SUP suggests that both section 3509 of the Warner Act and the rule itself lack transparency. SUP states that the law was ''buried in the massive 2007 defense authorization bill,'' and that the Coast Guard has bypassed the notice of proposed rulemaking phase of public comment and gone right to an interim rule, thus further limiting discussion of the rule.

The comment concerning the legislative procedure that led to the creation of the Warner Act is beyond the scope of this rulemaking. In the interim rule, published April 24, 2007, the Coast Guard explained that, under the Administrative Procedure Act, it had good cause to issue an effective rule without first providing notice and an opportunity for comment (*see* 72 FR 20281). Even with the good cause, however, we requested public comment on the interim rule. For this reason, we disagree with the assertion that this rule ''lacks transparency.''

In preparing this final rule, the Coast Guard made three minor, non-substantive changes, from the interim rule, in the regulatory text. Two of the changes occur in 46 CFR 12.40–7 ''Employer Requirements,'' and the third occurs in 12.40–13 ''Restrictions.'' In section 12.40–7, first we capitalized the term ''Transportation Worker Identification Credential,'' to correctly identify it. Second, we reorganized paragraph (d) to more clearly identify when an employer must return a mariner's TWIC and/or MMD (now called MMC) to the government (either TSA or Coast Guard, as appropriate). Our third change is found in section 12.40–13, where we spelled out the abbreviation ''STCW.'' None of these edits change the substance of the Interim Rule.

Since publication of the interim rule, the Coast Guard published a final rule titled ''Consolidation of Merchant Mariner Qualification Credentials'' (74 FR 11196; USCG–2006–24371). That final rule consolidated all previously issued Coast Guard credentials (including the MMD) into one new credential, called a merchant mariner credential (MMC). It also reorganized 46 CFR chapter I, subchapter B. Changes made by that final rule have been incorporated into this final rule. These include: changing the term ''merchant mariner's document'' to ''merchant mariner credential'' in every place that it appeared; updating cross references (where the sections referenced in the interim rule were moved as part of the reorganization); moving the definitions from subpart 12.40 to the definition section covering all of subchapter B (46 CFR 10.107); and revising the subpart's title.

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below, we summarize our analyses based on 13 of these statutes or executive orders.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Public comments on the interim rule are summarized in Part V of this publication. We received no public comments that would alter our assessment of impacts in the interim rule. We have adopted the assessment in the interim rule as final. *See* the

''Regulatory Evaluation'' section of the interim rule for more details. A summary of the assessment follows.

The Coast Guard issues this rule as mandated by Congress through the Warner Act. *See* the ''Background'' section for more information about this legislation.

The rule creates an exemption to allow qualified non-resident aliens to obtain MMCs for employment as unlicensed seamen in the steward's departments of large passenger vessels, as entertainment and service personnel, including wait staff, hotel housekeeping staff, and food handlers. Prior to issuance of the interim rule, only U.S. citizens, lawful permanent residents, and foreign nationals enrolled at the U.S. Merchant Marine Academy could obtain MMDs (now MMCs) as unlicensed seamen (and no more than 25 percent of these unlicensed seamen may be lawful permanent residents). This rule will permit non-resident aliens to also obtain MMCs for employment as rated seamen on large passenger vessels, except no more than 25 percent of the rated seamen on a large passenger vessel can be aliens (whether non-resident, non-permanent resident aliens or lawful permanent residents). The rule further requires that the non-resident aliens may only be employed in the steward's department of a large passenger vessel.

Although the Warner Act and this rule allow large passenger vessels to hire non-resident aliens, neither the Act nor this rule mandates that they do so. Accordingly, there are no mandatory costs to large passenger vessels resulting from this rule. Rather, a company will only choose to avail itself of the exemption if the benefits to the company from the hiring of non-resident aliens are greater than the costs.

Based on Coast Guard Marine Inspection, Safety, and Law Enforcement system (MISLE) data, we determined there is only one large passenger vessel currently in service that meets the qualifications of this rule. Norwegian Cruise Line America (NCLA) operates the vessel in coastwise service in the Hawaiian Islands.[2] NCLA is the only company directly regulated by this rulemaking.

We expect most of the direct costs of the rule will be borne by NCLA. The rule will require NCLA to perform an employer-conducted background check and submit additional required merchant mariner application information to the Coast Guard on the employee's behalf. However, NCLA participation in this alternative compliance method is voluntary, and NCLA will only participate if the net benefits of doing so are positive. We estimate the benefit to NCLA from participating in this rule to be the cost savings made through reduced turnover and decreased startup training costs, since the non-resident aliens hired under this program will have experience aboard foreign-flag vessels.

This reduction in labor cost is the cost savings or net benefit for NCLA to participate in the alternative MMC citizenship compliance method of this rule. See the ''Regulatory Evaluation'' section of the interim rule for additional details.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). As discussed in the interim rule, the Coast Guard determined that this regulatory action is exempt from notice and comment rulemaking pursuant to 5 U.S.C. 553(b)(B). Therefore, an RFA analysis is not required for this rule. The Coast Guard, nonetheless, expects that this rule will not have a significant economic impact on a substantial number of small entities.

Based on Coast Guard MISLE data, we have determined that there is only one company (NCLA) is affected by this rule. We researched the company size and revenue data and found that this company is not considered a small entity by the Small Business Administration's size standards.

In the interim rule, we certified under 5 U.S.C. 605(b) that the interim rule would not have a significant economic impact on a substantial number of small entities. We have found no additional data or information that would change our findings in the interim rule. We have adopted the certification in the interim for this final rule. See the ''Small Entity'' section of the interim rule for additional detail.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule does not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard. Small businesses may send comments on the actions of Federal Employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520). Under OMB regulations implementing the PRA, ''Controlling Paperwork Burdens on the Public'' (5 CFR 1320), collection of information means the obtaining, soliciting, or requiring the disclosure to an agency of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons. ''Ten or more persons'' refers to the number of respondents to whom a collection of information is addressed by the agency within any 12-month period and does not include employees of the respondent acting within the scope of their employment, contractors engaged by a respondent for the purpose of complying with the collection of information, or current employees of the Federal government. Collections of information affecting ten or more respondents within any 12-month period require OMB review and approval.

This rule will require employers to submit employee information to the Coast Guard before the Coast Guard will issue an MMC for their employees. However, we expect only one company will be affected by this requirement each year, as there is only one company (NCLA) in a position to take advantage of these regulations. NCLA has been submitting information under the

[2] Since April 2007, NCLA has removed two vessels from U.S. service and re-flagged them for foreign service.

interim rule since April 2007. We have no data or information to suggest that there will be additional companies affected by the rule. As such, the number of respondents is less than the threshold of ten respondents per 12-month period for collection of information requirements under the PRA.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (*See* the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke and Intertanko* v. *Locke*, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).) This final rule deals with personnel qualifications and the manning requirements on large passenger vessels. Because the States may not regulate within these categories, preemption under Executive Order 13132 is not an issue.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(c) of the Instruction. This paragraph excludes regulatory actions concerning the training, qualifying, licensing, and disciplining of maritime personnel from further environmental documentation, and this final rule concerns the licensing of maritime personnel. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 12

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 12 and 15 by adopting as final the interim rule published April 24, 2007 (72 FR 20278), with the following changes:

PART 12—CERTIFICATION OF SEAMEN

■ 1. Revise Subpart 12.40 to read as follows:

Subpart 12.40—-Non-resident Alien Unlicensed Members of the Steward's Department on U.S. Flag Large Passenger Vessels

Sec.

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701 and 8103; Department of Homeland Security Delegation No. 0170.1.

§ 12.40–1 Purpose of rules.

The rules in this subpart implement 46 U.S.C. 8103(k) by establishing requirements for the issuance of merchant mariner credentials, valid only for service in the steward's department of U.S. flag large passenger vessels, to non-resident aliens.

§ 12.40–3 [Reserved]

§ 12.40–5 General application requirements.

(a) Unless otherwise expressly specified in this subpart, non-resident alien applicants for Coast Guard-issued merchant mariner credentials are subject to all applicable requirements contained in this subchapter.

(b) No application from a non-resident alien for a merchant mariner credential issued pursuant to this subpart will be accepted unless the applicant's employer satisfies all of the requirements of § 12.40–7 of this subpart.

§ 12.40–7 Employer requirements.

(a) The employer must submit the following to the Coast Guard, as a part of the applicant's merchant mariner credential application, on behalf of the applicant:

(1) A signed report that contains all material disciplinary actions related to the applicant, such as, but not limited to, violence or assault, theft, drug and alcohol policy violations, and sexual harassment, along with an explanation of the criteria used by the employer to determine the materiality of those actions;

(2) A signed report regarding an employer-conducted background check. The report must contain:

(i) A statement that the applicant has successfully undergone an employer-conducted background check;

(ii) A description of the employer-conducted background check, including all databases and records searched. The background check must, at a minimum, show that the employer has reviewed all information reasonably and legally available to the owner or managing operator, including the review of available court and police records in the applicant's country of citizenship, and any other country in which the applicant has received employment referrals, or resided, for the past 20 years prior to the date of application; and

(iii) All information derived from the employer-conducted background check.

(3) The employer-conducted background check must be conducted to the satisfaction of the Coast Guard for a merchant mariner credential to be issued to the applicant.

(b) If a merchant mariner credential is issued to the applicant, the report and information required in paragraph (a)(2) of this section must be securely kept by the employer on the U.S. flag large passenger vessel, or U.S. flag large passenger vessels, on which the applicant is employed. The report and information must remain on the last U.S. flag large passenger vessel on which the applicant was employed until such time as the merchant mariner credential is returned to the Coast Guard in accordance with paragraph (d) of this section.

(c) If a merchant mariner credential or a Transportation Worker Identification Credential (TWIC) is issued to the applicant, each merchant mariner credential and TWIC must be securely kept by the employer on the U.S. flag large passenger vessel on which the applicant is employed. The employer must maintain a detailed record of the seaman's total service on all authorized U.S. flag large passenger vessels, and must make that information available to the Coast Guard upon request, to demonstrate that the limitations of § 12.40–13(c) of this subpart have not been exceeded.

(d) In the event that the seaman's merchant mariner credential and/or TWIC expires, the seaman's visa status terminates, the seaman serves onboard the U.S. flag large passenger vessel(s) for 36 months in the aggregate as a nonimmigrant crewman, the employer terminates employment of the seaman or if the seaman otherwise ceases working with the employer, the employer must return the merchant mariner credential to the Coast Guard and the TWIC to the Transportation Security Administration within 10 days of the event.

(e) In addition to the initial material disciplinary actions report and the initial employer-conducted background check specified in paragraph (a) of this section, the employer must:

(1) Submit an annual material disciplinary actions report to update whether there have been any material disciplinary actions related to the applicant since the last material disciplinary actions report was submitted to the Coast Guard.

(i) The annual material disciplinary actions report must be submitted to the satisfaction of the Coast Guard in accordance with the same criteria set forth in paragraph (a)(1) of this section, except that the period of time examined for the material disciplinary actions report need only extend back to the date of the last material disciplinary actions report; and

(ii) The annual material disciplinary actions report must be submitted to the Coast Guard on or before the anniversary of the issuance date of the merchant mariner credential.

(2) Conduct a background check each year that the merchant mariner's document is valid to search for any changes that might have occurred since the last employer-conducted background check was performed:

(i) The annual background check must be conducted to the satisfaction of the Coast Guard in accordance with the same criteria set forth in paragraph (a)(2) of this section, except that the period of time examined during the annual background check need only extend back to the date of the last background check; and

(ii) All information derived from the annual background check must be submitted to the Coast Guard on or before the anniversary of the issuance date of the merchant mariner credential.

(f) The employer is subject to the civil penalty provisions specified in 46 U.S.C. 8103(f) for any violation of this section.

§ 12.40–9 Basis for denial.

In addition to the requirements for a merchant mariner credential established elsewhere in this subchapter, and the basis for denial established in §§ 10.209, 10.211, and 10.213 of this subchapter, an applicant for a merchant mariner credential issued pursuant to this subpart must:

(a) Have been employed, for a period of at least one year, on a foreign flag passenger vessel(s) that is/are under the same common ownership or control as the U.S. flag large passenger vessel(s) on which the applicant will be employed upon issuance of a merchant mariner credential under this subpart.

(b) Have no record of material disciplinary actions during the employment required under paragraph (a) of this section, as verified in writing by the owner or managing operator of the U.S. flag large passenger vessel(s), on which the applicant will be employed.

(c) Have successfully completed an employer-conducted background check, to the satisfaction of both the employer and the Coast Guard.

(d) Meet the citizenship and identity requirements of § 12.40–11 of this subpart.

§ 12.40–11 Citizenship and identity.

(a) In lieu of the requirements of § 10.221 of this subchapter, a non-

resident alien may apply for a Coast Guard-issued merchant mariner credential, endorsed and valid only for service in the steward's department of a U.S. flag large passenger vessel as defined in this subpart, if he or she is authorized for employment under the immigration laws of the United States, including an alien crewman described in section 101(a)(15)(D)(i) of that Act.

(b) To meet the citizenship and identity requirements of this subpart, an applicant must present an unexpired passport issued by the government of the country of which the applicant is a citizen or subject; and either a valid U.S. C–1 or D visa or other valid evidence of employment authorization in the United States deemed acceptable by the Coast Guard.

(c) Any non-resident alien applying for a merchant mariner credential under this subpart may not be a citizen of, or a temporary or permanent resident of, a country designated by the Department of State as a ''State Sponsor of Terrorism'' pursuant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

§ 12.40–13 Restrictions.

(a) A merchant mariner credential issued to a non-resident alien under this subpart authorizes service only in the steward's department of the U.S. flag large passenger vessel(s), that is/are under the same common ownership and control as the foreign flag passenger vessel(s), on which the non-resident alien served to meet the requirements of § 12.40–9(a) of this subpart:

(1) The merchant mariner credential will be endorsed for service in the steward's department in accordance with § 12.25–10 of this part;

(2) The merchant mariner credential may also be endorsed for service as a food handler if the applicant meets the requirements of § 12.25–20 of this part; and

(3) No other rating or endorsement is authorized, except lifeboatman, in which case all applicable requirements of this subchapter and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW Convention), and the Seafarers' Training, Certification and Watchkeeping Code (STCW Code), must be met.

(b) The following restrictions must be printed on the merchant mariner credential, or listed in an accompanying Coast Guard letter, or both:

(1) The name and official number of all U.S. flag vessels on which the non-resident alien may serve. Service is not authorized on any other U.S. flag vessel;

(2) Upon issuance, the merchant mariner credential must remain in the custody of the employer at all times;

(3) Upon termination of employment, the merchant mariner credential must be returned to the Coast Guard within 10 days in accordance with § 12.40–7 of this subpart;

(4) A non-resident alien issued a merchant mariner credential under this subpart may not perform watchstanding, engine room duty watch, or vessel navigation functions; and

(5) A non-resident alien issued a merchant mariner credential under this subpart may perform emergency-related duties provided:

(i) The emergency-related duties do not require any other rating or endorsement, except lifeboatman as specified in paragraph (a)(3) of this section;

(ii) The non-resident alien has completed familiarization and basic safety training as required in § 15.1105 of this subchapter;

(iii) That if the non-resident alien serves as a lifeboatman, he or she must have the necessary lifeboatman's endorsement; and

(iv) The non-resident alien has completed the training for crewmembers on passenger ships performing duties involving safety or care for passengers, as required in subpart 12.35 of this part.

(c) A non-resident alien may only serve for an aggregate period of 36 months actual service on all authorized U.S. flag large passenger vessels combined under the provisions of this subpart:

(1) Once this 36-month limitation is reached, the merchant mariner credential becomes invalid and must be returned to the Coast Guard under § 12.40–7(d) of this subpart, and the non-resident alien is no longer authorized to serve in a position requiring a merchant mariner credential on any U.S. flag large passenger vessel; and

(2) An individual who successfully adjusts his or her immigration status to that of an alien lawfully admitted for permanent residence to the United States or who becomes a United States citizen may apply for a merchant mariner credential, subject to the requirements of § 10.221 of this subchapter, without any restrictions or limitations imposed by this subpart.

§ 12.40–15 Alternative means of compliance.

(a) The owner or managing operator of a U.S. flag large passenger vessel, or U.S. flag large passenger vessels, seeking to employ non-resident aliens issued merchant mariner credential under this subpart may submit a plan to the Coast Guard, which, if approved, will serve as an alternative means of complying with the requirements of this subpart.

(b) The plan must address all of the elements contained in this subpart, as well as the related elements contained in § 15.530 of this subchapter, to the satisfaction of the Coast Guard.

PART 15—MANNING REQUIREMENTS

■ 2. The authority citation for part 15 is revised to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 8906, 9102, and 8103; and Department of Homeland Security Delegation No. 0170.1.

■ 3. Revise § 15.530 in subpart D to read as follows:

§ 15.530 Large passenger vessels.

(a) The owner or operator of a U.S. flag large passenger vessel must ensure that any non-resident alien holding a Coast Guard-issued merchant mariner credential described in subpart 12.40 of this subchapter is provided the rights, protections, and benefits of the International Labor Organization's Merchant Shipping (Minimum Standards) Convention of 1976.

(b) On U.S. flag large passenger vessels, non-resident aliens holding a Coast Guard-issued merchant mariner credential described in subpart 12.40 of this subchapter:

(1) May only be employed in the steward's department on the vessel(s) specified on the merchant mariner credential or accompanying Coast Guard letter under § 12.40–13(b)(1) of this subchapter;

(2) May only be employed for an aggregate period of 36 months actual service on all authorized U.S. flag large passenger vessels combined, under § 12.40–13(c) of this subchapter;

(3) May not perform watchstanding, engine room duty watch, or vessel navigation functions, under § 12.40–13(b)(4) of this subchapter; and

(4) May perform emergency-related duties only if, under § 12.40–13(b)(5) of this subchapter:

(i) The emergency-related duties do not require any other rating or endorsement, except lifeboatman as specified in § 12.40–13(a)(3) of this subchapter;

(ii) The non-resident alien has completed familiarization and basic safety training, as required in § 15.1105 of this part;

(iii) That if the non-resident alien serves as a lifeboatman, he or she must have the necessary lifeboatman's endorsement; and

(iv) The non-resident alien has completed the training for crewmembers on passenger ships performing duties involving safety or care for passengers, as required in subpart 12.35 of this subchapter.

(c) No more than 25 percent of the total number of ratings on a U.S. flag large passenger vessel may be aliens, whether admitted to the United States for permanent residence or authorized for employment in the United States as non-resident aliens.

(d) The owner or operator of a U.S. flag large passenger vessel employing non-resident aliens holding Coast Guard-issued merchant mariner credentials described in subpart 12.40 of this subchapter must:

(1) Retain custody of all non-resident alien merchant mariner credentials for the duration of employment, under § 12.40–13(b)(2) of this subchapter; and

(2) Return all non-resident alien merchant mariner credentials to the Coast Guard upon termination of employment, under § 12.40–13(b)(3) of this subchapter.

(e) The owner or operator of a U.S. flag large passenger vessel employing non-resident aliens holding Coast Guard-issued merchant mariner credentials described in subpart 12.40 of this subchapter is subject to the civil penalty provisions specified in 46 U.S.C. 8103(f), for any violation of this section.

Dated: September 10, 2009.

Jeffrey G. Lantz,

Director of Commercial Regulations & Standards CG–52.

[FR Doc. E9–22355 Filed 9–16–09; 8:45 am]

BILLING CODE 4910–15–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 514, and 552

[GSAR Amendment 2009–11; GSAR Case 2008–G505 (Change 39); Docket 2008–0007; Sequence 20]

RIN 3090–AI73

General Services Acquisition Regulation; GSAR Case 2008–G505; Rewrite of GSAR Part 514, Sealed Bidding

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the GSA Acquisition Regulation (GSAR) by revising the sections of GSAR Part 514 that provide requirements for sealed bidding. This rule is a result of the GSA Manual (GSAM) Rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the Federal Acquisition Regulation (FAR), and to implement streamlined and innovative acquisition procedures that contractors, bidders, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

DATES: October 19, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael O. Jackson at (202) 208–4949. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2008–G505 (Change 39), in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Background

The GSA is amending the GSAR to revise sections of GSAR Part 514 that provide requirements for sealed bidding.

This final rule is a result of the GSA Acquisition Manual (GSAM) rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the Federal Acquisition Regulation (FAR) and to implement streamlined and innovative acquisition procedures that contractors, bidders, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

The GSA will rewrite each part of the GSAR and GSAM, and as each GSAR part is rewritten, will publish it in the **Federal Register**.

This rule covers the rewrite of GSAR Part 514. The specific changes are as follows:

501.106 OMB Approval under the Paperwork Reduction Act.

• Added OMB Control No. 3090–0162 as a cross reference for 514.201–1.

514.201–2 Part I—The Schedule.

• Changed paragraph (a) from ''When you'' to ''When using''. Also in paragraph (a) changed ''which'' to ''that'' and added all three FAR clauses for Prompt Payment (52.232–25, 52.232–26, and 52.232–27).

• Changed the word ''offer'' to ''bid''.

• Changed paragraph (b) from ''When you use'' to ''When using'' to clarify the reference to ''you'' and added a reference to the Standard Form 1449 as an example that this form can also be used.

514.201–6 Solicitation provisions.

• Changed ''When you'' to ''When considering'' to delete the reference to the word ''you''.

• Changed ''All or None Offers'' to ''All or None Bids''.

• Deleted the reference for Alternate I because the alternate is being proposed for deletion because it is not consistent with the intention of the basic clause.

514.201–7 Contract clauses.

• In the old paragraph (a) changed ''you'' to ''The contracting officer''.

• Deleted paragraph (b), Examination of Records. The clause does not provide basic audit rights that are in addition to the FAR clauses at 52.215–2, Audit and Records—Negotiation and 52.214–26, Audit and Records—Sealed Bidding. And as opposed to the GSA clause, the FAR clause is specific to sealed bids. Further, the GSA clause grants to the agency rights to audit subcontractors that are in excess of those granted by the FAR and the statute.

514.202–4 Bid samples.

• Renamed paragraphs (a) and (b) to be more consistent with the FAR.

• Also in paragraphs (a) and (b) restructured the language to remove the word ''you'' and replaced with contracting officer.

• Clarified the language to state who must take physical custody of bid samples.

• Deleted paragraph (c) because it is redundant with FAR 14.202–4(d).

514.202–5 Descriptive Literature.

• Added a new GSAR section in order to address the requirements of FAR 14.202–5(c).

514.270–1 Definition. Deleted hyphenation in ''separately-priced''.

514.270–2 Justification for use.

• Inserted ''the contracting officer should'' in paragraph (b) and made last sentence of paragraph (3) a new number paragraph (4) and renumbered old paragraphs (4) and (5) to paragraphs (5) and (6), respectively.

• Added ''the contracting officer should'' to replace the understood ''you'' and deleted ''Do'' in paragraph (c).

514.270–3 Evaluation factors for award.

• Edited to avoid either using the passive voice or repeating ''the contracting officer''.

514.270–4 Grouping line items for aggregate award.

• In paragraph (a) the title ''Type of contract'' was changed to one that is more descriptive of the substance of the paragraph; type of contract refers to Part 16 contract types.

• In paragraph (b) changed the ''when you group'' to ''when grouping'' and in paragraph (d)(3)(i) changed ''It can cause you to lose'' to ''It can cause the loss of''.

• In paragraph (d)(2) changed ''respond'' to ''responded''.

514.270–6 Guidelines for using the weight factors method.

• In paragraph (a) changed ''you have'' to ''there are''.

• In paragraph (d) changed ''You may reduce estimated quantities'' to ''Estimated quantities may be reduced''.

• In paragraph (e) deleted the ''you'' in the first sentence.

514.270–7 Guidelines for using the price list method.

• In paragraph (a) changed ''you need to make'' to ''making''.

• In paragraph (b) changed ''When you use'' to ''using''.

• In paragraph (c) changed ''You may develop price lists'' to ''Price lists may be developed''.

• In paragraph (d) changed ''you use'' to ''the contracting officer uses'' and changed ''You may provide'' to ''This information may be provided''.

• In paragraph (e) changed ''You may use prices'' to ''Prices may be used''.

• In paragraph (h) changed ''If you cannot estimate the Government's needs'' to ''If the Government's needs cannot be estimated''.

• In paragraph (i)(6) changed ''If you provide'' to ''If providing''.

• In paragraph (i)(8) deleted the sentence in its entirety and replaced it with ''When the solicitation further groups united prices by trade or business category, multiple percentages may be required''.

514.407–3 Other mistakes disclosed before award.

• Deleted paragraph (b) because it is redundant with FAR 14.407–3(f).

• Renumbered old paragraphs (1) and (2) as paragraphs (a) and (b), respectively.

514.407–4 Mistakes after award.

• Added ''are required to'' and changed ''your'' to ''the contracting officer's''.

552.214–70 ''All or None'' Bids.

• In paragraph (a) deleted the first part of the sentence so it now to begins with ''The Government . . . .''

• Deleted Alternate I in its entirety to match the changes.

• Changed all occurrences of the word ''offer'' to ''bid''.

552.214–71 Progressive Awards and Monthly Quantity Allocations.

• Changed all occurrences of the words ''offeror'', ''offer'' or ''offering'' to ''bidder'', ''bid'', or bidding.

552.214–72 Bid Sample Requirements.

• Deleted ''NOTE: (1)'' because it is redundant.

Discussion of Comments

A proposed rule for the regulatory portion of the GSAM was published in the **Federal Register** at 73 FR 60225 on October 10, 2008. The public comment period for GSAR Part 514 closed on December 9, 2008, and four (4) comments were received. A discussion of these comments is provided below:

Comment 1: 514.201–2.

''(See FAR 52.232–25)'' has been added to the subsection. However, that is only one of three Prompt Payment clauses. Recommend all three clauses be referenced as historically construction has been procured with sealed bidding. While that has changed in the last decade, all three clauses should still be referenced: ''(See FAR 52.232–25, 52.232–26, or 52.232–27, as applicable)''.

Response:

Concur. All three Prompt Payment clauses have been added.

Comment 2: 514.202–5.

Recommend deleting this section. It merely states the clause in the FAR is sufficient. It does not add any value. If the information is already in the FAR, no further information needs to be identified in the GSAR.

Response:

Non-concur; 514.202–5 amplifies the information, or rather points the reader to the information in the FAR.

Comment 3: 514.270–2.

The new paragraph (a)(4) already exists, verbatim, as part of paragraph (a)(3). As the proposed paragraph (a)(4) is related to the information in paragraph (a)(3), recommend leaving it in paragraph (a)(3), but reformatting the sentence to make it clear it is part of (a)(3). In the current GSAR, it has been dropped down a line.

Response:

Non-concur. Items (a)(3) and (a)(4) are different enough that they can be listed as two different items in the list of series.

Comment 4: 514.270–3.

Recommend adding a clause or provision as a consistent method for providing the notification required in the solicitation. Revise as, ''Insert a clause substantially the same as the clause at 552.214–XX, Evaluation for Aggregate Award, in solicitations that will include aggregate line items for award.''

Response:

Non-concur. The team believes that FAR 52.214–22, Evaluation of Bids for Multiple Awards, provides equivalent coverage.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive. The revisions only update and reorganize existing coverage. This is not a significant change. Therefore, a Regulatory Flexibility Analysis was not performed. In accordance with 5 U.S.C. 610, the proposed rule requested comments from small entities concerning this assessment, and no comments were received.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 3090–0027.

List of Subjects in 48 CFR Parts 501, 514, and 552

Government procurement.

Dated: August 31, 2009.

David A. Drabkin,

Senior Procurement Executive, Office of Acquisition Policy, General Services Administration.

■ Therefore, GSA amends 48 CFR parts 501, 514, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 501, 514, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

501.106 [Amended]

■ 2. Amend section 501.106 by adding the GSAR Reference number ''514.201–1'', in numerical sequence, and its corresponding OMB Control No. ''3090–0163''.

PART 514—SEALED BIDDING

■ 3. Revise section 514.201–2 to read as follows:

514.201–2 Part I—The Schedule.

(a) When using Standard Form 33, Solicitation, Offer and Award, include the following cautionary notice:

''Notice to Bidders—Use Item 13 of the Standard Form 33, Solicitation, Offer and Award, to offer prompt payment discounts. The Prompt Payment clause of this solicitation sets forth payment terms. Do not insert any statement in Item 13 that requires payment sooner than the time stipulated in the Prompt Payment clause (See FAR 52.232–25, 52.232–26, or 52.232–27, as applicable). EXAMPLE: If you insert ''NET 20'' in Item 13, GSA will reject your bid as nonresponsive because the entry contradicts the 30 day payment terms specified in the Prompt Payment clause.''

(b) When using other authorized forms (*e.g.*, Standard Form 1447, Solicitation/Contract; Standard Form 1449, Solicitation/Contract/Order for Commercial Items), include the notice in paragraph (a) of this section. Change the reference to the form number, form title, and item number accordingly.

■ 4. Revise section 514.201–6 to read as follows:

514.201–6 Solicitation provisions.

When considering all or none bids, insert the provision at 552.214–70, ''All or None'' Bids, in the solicitation.

■ 5. Revise section 514.201–7 to read as follows:

514.201–7 Contract clauses.

Stock replenishment contracts. For some stock replenishment contracts, individual contractors may be unable to furnish the Government's monthly requirements. The contracting officer may determine that progressive awards will be more expedient. In such cases, insert a clause substantially the same as the clause at 552.214–71, Progressive Awards and Monthly Quantity Allocations, in the solicitation and contract.

■ 6. Revise section 514.202–4 to read as follows:

514.202–4 Bid samples.

(a) *Requirements for samples in invitations for bids.* (1) When bid samples are required, the contracting officer shall require bidders to submit samples produced by the manufacturer whose products will be supplied under the contract.

(2) The FAR limits use of bid samples to cases where the contracting officer cannot describe some characteristics of a product adequately in the specification or purchase description. This usually applies to subjective characteristics. The contracting officer may determine that there is a need to examine objective characteristics of bid samples to determine the responsiveness of a bid. The contracting officer should base the determination on past experience or other valid considerations. In the solicitation, separately list ''Subjective Characteristics'' and ''Objective Characteristics''.

(3) A provision appears at 552.214–72, Bid Sample Requirements. This provision may be modified to fit the circumstances of a procurement.

(b) *Handling bid samples.* (1) Samples from accepted bids must be retained for the period of contract performance. If there are no outstanding claims regarding the contract, the contracting officer may authorize disposal of the samples at the end of the contract term following the bidder's instructions.

(2) If the contracting officer anticipates a claim regarding the contract, the contracting officer shall require that the bid samples be retained until the claim is resolved.

(3) The contracting officer shall require that samples from unsuccessful bids be retained until award. After award, these samples may be disposed of following the bidder's instructions.

■ 7. Add section 514.202–5 to read as follows:

514.202–5 Descriptive literature.

Requirements for Invitations for bids. When using brand name or equal purchase descriptions, the provision at FAR 52.211–6 satisfies the requirement for descriptive literature.

514.203 [Removed]

■ 8. Remove section 514.203.

■ 9. Amend section 514.270–2 by—

■ a. Redesignating paragraphs (a)(4) and (a)(5) as paragraphs (a)(5) and (a)(6), respectively, and adding new paragraph (a)(4); and

■ b. Revising the introductory text of paragraph (b), and paragraph (c).

■ The revised and added text reads as follows:

514.270–2 Guidelines for use.

(a) * * *

(4) Awarding the low-demand articles in conjunction with the high-demand articles may encourage competition.

* * * * *

(b) Before deciding to combine items for aggregate award, the contracting officer should consider the following factors:

* * * * *

(c) The contracting officer should not use an aggregate award if it will significantly restrict the number of eligible bidders.

■ 10. Revise section 514.270–3 to read as follows:

514.270–3 Evaluation factors for award.

The solicitation should clearly state the basis for evaluating bids for aggregate award, require bidders to submit a price on each item within the group or a percentage to be added or subtracted from a list price, and advise bidders that failure to submit prices as required within a group makes a bid ineligible for award for that group.

■ 11. Amend section 514.270–4 by—

■ a. Revising paragraph (a);

■ b. Removing from paragraph (b) ''you group'' and adding ''grouping'' in its place;

■ c. Removing from paragraph (d)(2) ''respond'' and adding ''responded'' in its place; and

■ d. Removing from paragraph (d)(3)(i) ''you to lose'' and adding ''the loss of'' in its place.

514.270–4 Grouping line items for aggregate award.

(a) *Supplies and services.* This subsection applies to acquisitions of supplies and services.

* * * * *

■ 12. Amend section 514.270–6 by—

■ a. Removing from the introductory text of paragraph (a) ''you have'' and adding ''there are'' in its place;

■ b. Revising the first sentence in paragraph (d); and

■ c. Removing from paragraph (e) the word ''you''.

■ The revised text reads as follows:

514.270–6 Guidelines for using the weight factors method.

* * * * *

(d) Estimated quantities may be reduced to smaller numbers by a common denominator. * * *

* * * * *

■ 13. Amend section 514.270–7 by—

■ a. Revising the first sentence in paragraph (a);

■ b. Revising the introductory text of paragraphs (b) and (c);

■ c. Revising paragraph (d);

■ d. Revising the second sentence of paragraph (e); and

■ e. Revising the third sentence in paragraph (h), and paragraphs (i)(6) and (i)(8).

■ The revised text reads as follows:

514.270–7 Guidelines for using the price list method.

(a) *General.* The price list method helps avoid unbalanced bidding when making aggregate awards, but lack accurate estimates of anticipated quantities. * * *

(b) *Solicitation requirements.* When using the price list method, in the solicitation:

* * * * *

(c) *Developing list prices.* Price lists may be developed using one or more of the following sources:

* * * * *

(d) *First time use for an item or service.* The first time the contracting officer uses list prices for an item or service, give prospective bidders an opportunity to review the proposed list. Also provide information on how GSA will use the list prices. This information may be provided in a draft solicitation.

(e) * * *. Prices may be used from previous awards made using the weight factors method to develop price lists.

* * * * *

(h) * * *. If the Government's needs cannot be estimated, the solicitation may include past orders. * * *

(i) * * *

(6) If providing quantity estimates, state that the estimates are for information only and do not constitute guarantees or commitments to order items under the contract.

* * * * *

(8) When the solicitation further groups unit prices by trade or business category, multiple percentages may be required.

* * * * *

■ 14. Revise section 514.407–3 to read as follows:

514.407–3 Other mistakes disclosed before award.

Delegation of authority by head of the agency. Under FAR 14.407–3(e), contracting directors (see 502.101) are authorized, without power of redelegation, to make:

(a) The determinations regarding corrections and withdrawals under FAR 14.407–3(a), (b), and (c); and

(b) The corollary determinations not to permit withdrawal or correction under FAR 14.407–3(d).

■ 15. Revise section 514.407–4 to read as follows:

514.407–4 Mistakes after award.

The contracting director and assigned counsel are required to review and approve the contracting officer's determinations under FAR 14.407–4(b) and (c).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 16. Revise the section heading, date of the provision and paragraphs (a) and (b) of section 552.214–70; and remove Alternate I.

■ The revised text reads as follows:

552.214–70 ''All or None'' Bids.

* * * * *

''ALL OR NONE'' BIDS (Oct 2009)

(a) The Government reserves the right to evaluate bids and make awards on an ''all or none'' basis as provided below.

(b) A bid submitted on an ''all or none'' or similar basis will be evaluated as follows: The lowest acceptable bid exclusive of the ''all or none'' bid will be selected with respect to each item (or group of items when the solicitation provides for aggregate awards) and the total cost of all items thus determined shall be compared with the total of the lowest acceptable ''all or none'' bid. Award will be made to result in the lowest total cost to the Government.

■ 17. Amend section 552.214–71 by revising the date of the clause, paragraph (a)(1), the introductory text of paragraph (a)(2), and paragraph (b) to read as follows:

552.214–71 Progressive Awards and Monthly Quantity Allocations.

* * * * *

PROGRESSIVE AWARDS AND MONTHLY QUANTITY ALLOCATIONS (Oct 2009)

(a) *Monthly quantity allocation.*

(1) Set forth below are the Government's estimated annual and monthly requirements for each stock item covered by this solicitation. Bids shall indicate, in the spaces provided, the monthly quantity which the bidder is willing to furnish of any item or group of items involving the use of the same production facilities. In making monthly allocations, bidders are urged to group as many items as possible. Such groupings will make it possible for the Government to make fullest use of the production capabilities of each bidder.

(2) Bidders need not limit their monthly allocations to the Government's estimated monthly requirements, since additional unanticipated needs may occur during the period of the contract. If a bid does not include monthly allocation quantities, it will be deemed to offer to furnish all of the Government's requirements, even though they may exceed the stated estimated requirements.

* * * * *

(b) *Progressive awards.* If the low responsive bid's monthly quantity allocation is less than the Government's estimated requirements, the Government may make progressive awards beginning with the low responsive bid and including each next low responsive bid to the extent necessary to meet the estimated requirements.

* * * * *

■ 18. Amend section 552.214–72 by—

■ a. Revising the date of the provision;

■ b. Revising the ''Note'' in paragraph (b); and

■ c. Adding paragraph (e).

■ The revised and added text reads as follows:

552.214–72 Bid Sample Requirements.

* * * * *

BID SAMPLE REQUIREMENTS (Oct 2009)

* * * * *

(b) * * *

NOTE: Bidders that propose to furnish an item or group of items from more than one manufacturer or production point must submit two samples from the production of each manufacturer or production point.

* * * * *

(e) Contracting Officer insert address.

_____

_____

_____

[FR Doc. E9–22209 Filed 9–16–09; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573 and 579

[Docket No. NHTSA–2008–0169; Notice 2]

RIN 2127–AK28

Early Warning Reporting Regulations

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule amends certain provisions of the early warning reporting (EWR) rule published pursuant to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act and adds requirements for information identifying products involved in a recall under 49 CFR part 573 *Defect and Noncompliance Responsibility and Reports.* This rule modifies the threshold for submitting quarterly EWR reports for light vehicle, bus, medium-heavy vehicle (excluding emergency vehicles), motorcycle and trailer manufacturers. It further requires manufacturers submitting EWR reports to submit product names that are consistent from reporting quarter to quarter and amends the definition of ''other safety campaign.'' It also amends part 573 *Defect and Noncompliance Responsibility and Reports* to add requirements that tire manufacturers provide a range of tire identification numbers of recalled tires and manufacturers provide the country of origin of a component involved in a recall.

DATES: *Effective Date:* The effective date of this final rule is October 19, 2009.

Compliance Date: Compliance by bus manufacturers producing 100 or more but fewer than 500 buses annually is not required until September 13, 2010.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket

number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Fourth Floor, Washington, DC 20590. The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Tina Morgan, Office of Defects Investigation, NHTSA (phone: 202–366–0699). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (*phone:* 202–366–5263). You may send mail to these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In 2000, Congress enacted the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Public Law 106–414. Up until the TREAD Act's enactment, NHTSA relied primarily on analyses of complaints from consumers and technical service bulletins (TSBs) from manufacturers to identify safety defects in motor vehicles and equipment. Congress concluded that NHTSA did not have access to data that may provide an earlier warning of safety defects. Accordingly, the TREAD Act included requirements that NHTSA prescribe rules requiring motor vehicle and equipment manufacturers to submit to NHTSA communications relating to defective equipment, information about foreign safety recalls and establishing early warning reporting requirements.

Responding to the TREAD Act requirements in 2002, NHTSA issued rules requiring that motor vehicle and equipment manufacturers provide communications regarding defective equipment, information on foreign safety recalls and certain early warning data. 49 CFR part 579; *see* 67 FR 45822; 67 FR 63295. The rules require:

- Monthly reporting of manufacturer communications (*e.g.*, notices to distributors or vehicle owners, customer satisfaction campaign letters, *etc.*) concerning defective equipment or repair or replacement of equipment;
- Reporting (within five days of a determination to take such an action) of information concerning foreign safety recalls and other safety campaigns in foreign countries; and
- Quarterly reporting of early warning information: production information; information on incidents involving death or injury; aggregate data on property damage claims, consumer complaints, warranty claims, and field reports; and copies of field reports (other than dealer reports) involving specified vehicle components, a fire, or a rollover.

We use the term ''Early Warning Reporting'' (EWR) here to apply to the requirements in the third category above, which are found at 49 CFR part 579, subpart C. As described more fully in the Background section, below, the requirements vary somewhat depending on the nature of the reporting entity (motor vehicle manufacturers, child restraint system manufacturers, tire manufacturers, and other equipment manufacturers) and the annual production of the entity. All of the EWR information NHTSA receives is stored in a database called ARTEMIS (which stands for Advanced Retrieval, Tire, Equipment, and Motor Vehicle Information System), which also contains additional information (*e.g.,* recall details and complaints filed directly by consumers) related to defects and investigations.

The Early Warning Division of the Office of Defects Investigation (ODI) reviews and analyzes a huge volume of manufacturer early warning data and documents. Using its traditional sources of information, such as complaints from vehicle owner questionnaires (VOQs) and manufacturers' own communications, and the additional information provided by EWR submissions, ODI investigates potential safety defects. These investigations often result in recalls. In 2008, for example, manufacturers recalled more than 8 million vehicles for defective conditions. The majority of the vehicles recalled were from recalls prompted by ODI investigations.

The TREAD Act requires that NHTSA periodically review its EWR rules. 49 U.S.C. 30166(m)(5). In previous EWR rulemakings, the agency indicated that we would begin a review of the EWR rule after two full years of reporting experience. *See* 67 FR 45822 (July 10, 2002) *and* 69 FR 3292 (January 23, 2004). When two full years of reporting concluded in 2006, NHTSA began its review of the EWR rule.

NHTSA evaluated the EWR rule in two phases. NHTSA completed phase one in 2007 and, after notice and comment, published a final rule on May 29, 2007. 72 FR 29435. The May 2007 final rule made three changes to the EWR rule. First, the agency eliminated the requirement to produce hard copies of a subset of field reports known as ''product evaluation reports.'' *See* 72 FR 29435, 29443. Second, the rule amended the definition of ''fire'' to more accurately capture fire related events. *Id.* Last, the agency limited the time that manufacturers must update missing vehicle identification number (VIN)/tire identification number (TIN) or a component in death or injury incidents to a period of no more than one year after NHTSA receives the initial report. 72 FR 29444.

On December 5, 2008, the agency issued a notice of proposed rulemaking containing the second part of our evaluation of the EWR rule. This final rule amends the EWR rule based upon that evaluation.

II. Summary of the Final Rule

The early warning reporting rule requires that certain manufacturers of motor vehicles and motor vehicle equipment submit information to NHTSA that could assist in the identification of safety-related defects. 49 CFR part 579, subpart C. The amount and frequency of reporting required of a

manufacturer is dependent upon its annual production volume.

Manufacturers of light vehicles, motorcycles, or trailers producing 500 or more units per year must submit quarterly reports. Manufacturers of light vehicles, motorcycles or trailers producing fewer than 500 units annually do not submit quarterly reports. Instead these smaller manufacturers are required to report to NHTSA when they receive a claim or notice identifying an incident that involves a death. 49 CFR 579.27.

Today's final rule raises the EWR quarterly reporting threshold for light vehicle manufacturers, motorcycle manufacturers and trailer manufacturers from 500 or more units to 5,000 or more units per year. Light vehicle, motorcycle and trailer manufacturers producing fewer than 5,000 units per year will now have to submit only information related to incidents involving fatalities.

Prior to today's rule, the EWR regulation required that medium-heavy vehicle and bus manufacturers producing 500 or more units per year submit EWR reports. Manufacturers whose production volume is below this threshold are required to submit information only on incidents involving a fatality. With two exceptions, today's final rule raises the EWR quarterly reporting threshold to an annual production of 5,000 or more vehicles. However, manufacturers of emergency vehicles producing 500 or more units per year must still file quarterly reports. For buses, the threshold is reduced to 100 or more buses produced annually.

Today's final rule also adds a new requirement requiring vehicle and equipment manufacturers to provide consistent naming conventions for their products from quarter to quarter.

Last, today's final rule amends two subsections of 49 CFR 573.6 to add language stating that tire manufacturers' recall reports include the tire identification number (TIN) of all tires within the scope of a recall and that all Part 573 Defect or Noncompliance Information Reports identify a recalled component's country of origin. Specifically, we are amending 49 CFR 573.6(c)(2)(iii) to require a range of TINs and 573.6(c)(2)(iv) to identify the recalled component's country of origin.

III. Background

A. The Early Warning Reporting Rule

On July 10, 2002, NHTSA published a rule implementing the early warning reporting provisions of the TREAD Act. 67 FR 45822. This EWR regulation divides manufacturers of motor vehicles and motor vehicle equipment into two groups with different reporting responsibilities. The first group consists of (a) larger vehicle manufacturers (manufacturers of 500 or more vehicles annually) producing light vehicles, medium-heavy vehicles and buses, trailers and/or motorcycles; (b) tire manufacturers producing over a certain number per tire line; and (c) all manufacturers of child restraints. The first group must submit comprehensive reports every calendar quarter. 49 CFR 579.21–26. The second group consists of smaller vehicle manufacturers (e.g., manufacturers of fewer than 500 vehicles annually) and all motor vehicle equipment manufacturers other than those in the first group. The second group has limited reporting responsibility. 49 CFR 579.27.

Manufacturers in the first group must submit comprehensive quarterly reports for each make and model for the calendar year of the report and nine previous model years. Tire and child restraint manufacturers must transmit comprehensive reports for the calendar year of the report and four previous production years. Each report is subdivided so that the information on each make and model is provided by specified vehicle systems and components. The vehicle systems or components involved vary depending upon the type of vehicle or equipment manufactured.[1]

In general (not all of these requirements apply to manufacturers of child restraints or tires), manufacturers that submit comprehensive reports must report information on:

- Production (the cumulative total of vehicles or items of equipment manufactured in the year).
- Incidents involving death or injury based on claims and notices received by the manufacturer.
- Claims relating to property damage received by the manufacturer.
- Warranty claims paid by the manufacturer pursuant to a warranty program (in the tire industry these are warranty adjustment claims).
- Consumer complaints (a communication by a consumer to the manufacturer that expresses dissatisfaction with the manufacturer's product or performance of its product or an alleged defect).
- Field reports (a report prepared by an employee or representative of the manufacturer concerning the failure, malfunction, lack of durability or other performance problem of a motor vehicle or item of motor vehicle equipment).

The reporting information on property damage claims, warranty claims, consumer complaints and field reports is in the form of numerical tallies, by specified system and component. These data are referred to as aggregate data. Reports on deaths or injuries contain specified data elements. In addition, manufacturers that submit comprehensive reports, other than tire manufacturers, are required to submit copies of non-dealer field reports.

In contrast to the comprehensive quarterly reports required of the first group, the second group does not have to provide quarterly reports. These manufacturers must only submit death incident information when they receive a claim or notice of a fatality.

B. Defect and Noncompliance Information Reports

Pursuant to 49 U.S.C. 30118 and 30119, a manufacturer is required to notify the Secretary if the manufacturer determines that a motor vehicle or item of motor vehicle equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard. 49 CFR part 573 *Defect and Noncompliance Responsibility and Reports* details the information required to be reported to NHTSA when a manufacturer determines that a defect or noncompliance with a Federal Motor Vehicle Safety Standard exists in a motor vehicle or item of motor vehicle equipment.

Section 573.6 specifies the information that manufacturers are required to submit to the agency. An important element of the notice to NHTSA is the identification of the component containing the defect or

[1] For instance, light vehicle manufacturers must provide reports on twenty vehicle components or systems: steering, suspension, service brake, parking brake, engine and engine cooling system, fuel system, power train, electrical system, exterior lighting, visibility, air bags, seat belts, structure, latch, vehicle speed control, tires, wheels, seats, fire and rollover.

In addition to the systems and components reported by light vehicle manufacturers, medium-heavy vehicle and bus manufactures must report on the following systems or components: service brake system air, fuel system diesel, fuel system other and trailer hitch.

Motorcycle manufacturers report on thirteen systems or components: steering, suspension, service brake system, engine and engine cooling system, fuel system, power train, electrical, exterior lighting, structure, vehicle speed control, tires, wheels and fire.

Trailer manufacturers report on twelve systems or components: suspension, service brake system-hydraulic, service brake system-air, parking brake, electrical system, exterior lighting, structure, latch, tires, wheels, trailer hitch and fire.

Child restraint and tire manufacturers report on fewer systems or components for the calendar year of the report and four previous model years. Child restraint manufacturers must report on four systems or components: buckle and restraint harness, seat shell, handle and base. Tire manufacturers must report on four systems or components: tread, sidewall, bead and other.

noncompliance. Section 573.6(c)(2)(iii) requires manufacturers to identify items of motor vehicle equipment by the component's generic name (tires, child seating system, axles, *etc.*), part number, size and function if applicable, the inclusive dates (month and year) of manufacturer if available and any other necessary information describing the items. Section 573.6(c)(2)(iv) requires manufacturers to identify the manufacturer of the component that contains the defect or noncompliance if the component was manufactured by a manufacturer different from the reporting manufacturer. In such a case, the reporting manufacturer must identify the component and the component's manufacturer by name, business address, and business telephone number.

C. Summary of the Proposed Rule

The December 5, 2008 NPRM proposed to raise the EWR quarterly reporting threshold for light vehicle manufacturers and trailer manufacturers from 500 to 5,000 or more vehicles per year. Those light vehicle and trailer manufacturers producing fewer than 5,000 units per year would submit information on incidents involving a death under section 579.27. We also proposed to eliminate the reporting threshold for bus manufacturers, which would require all bus manufacturers to provide comprehensive quarterly EWR reports. The proposal left the quarterly reporting threshold for medium-heavy vehicle manufacturers and motorcycles unchanged at 500 or more vehicles per year.

The NPRM also responded to the National Truck Equipment Association's (NTEA) petition for rulemaking. NTEA petitioned the agency to undertake a rulemaking to raise the threshold for all vehicle manufacturers from 500 to 5,000 units per year or, alternatively, sought to exempt final stage manufacturers from quarterly EWR reporting. The agency did not propose amendments as requested by NTEA, but requested comments on our decision to keep the threshold for quarterly EWR reports for medium-heavy vehicle manufacturers unchanged.

The agency proposed to add new provisions requiring vehicle and equipment manufacturers to use consistent quarter to quarter product naming conventions or provide NHTSA with timely notice of any changes, and to require light vehicle manufacturers to include the vehicle type in the aggregate portion of their quarterly EWR reports.

Additionally, we proposed to add electronic stability control as a component to the light vehicle reporting category and require that manufacturers specify fuel and/or propulsion systems when providing model designations to capture new technologies in the light vehicle market.

Finally, we proposed to amend two subsections of section 573.6. Specifically, we proposed to amend 573.6(c)(2)(iii) to require tire manufacturers to report tire identification numbers (TINs) of recalled tires and 573.6(c)(2)(iv) to require manufacturers to identify the country of origin of a recalled component that is the subject of a recall. We also proposed to add language to section 573.9 to facilitate the submission of reports affected by the proposal to require TINs.

D. Overview of Public Comments to the Proposed Rule

We received comments from several sources in response to the NPRM. Motor vehicle manufacturers and associated trade organizations commenting included the Alliance of Automobile Manufacturers (Alliance), Association of International Automobile Manufacturers (AIAM), Ford Motor Company (Ford), Truck Trailer Manufacturers Association (TTMA), Jayco, Inc. (Jayco), Big-Tex Trailer Manufacturing (Big-Tex), PJ Trailer Manufacturing (PJ Trailer), Motor & Equipment Manufacturers Association (MEMA), National Truck Equipment Associated (NTEA), Rubber Manufacturers Association (RMA), Recreation Vehicle Industry Association (RVIA), National Association of Trailer Manufacturers (NATM), National Marine Manufacturers Association (NMMA), and Carry-On Trailer Corporation (Carry-On). In general, the industry commenters supported the proposals to raise the reporting threshold for light vehicle manufacturers and trailer manufacturers. Some commenters requested a subset of their vehicle population, based upon either geography or size of their subsidiaries, be exempted from the light vehicle reporting category.

Some individual trailer manufacturers objected to raising the threshold from 500 units to 5,000 units annually. These manufacturers stated that by raising the threshold to 5,000 units per year would prevent the agency from receiving information from manufacturers of the heaviest, and, in their view, more dangerous trailers.

NTEA opposed the agency's decision to not raise the threshold for medium-heavy vehicles and buses. It stated that the burden on its members that are small multi-stage or final-stage vehicle manufacturers to collect and report EWR information outweighs any safety benefits.

The Small Business Administration (SBA) submitted comments supporting the NPRM, but requested NHTSA reconsider raising the reporting threshold for buses, medium-heavy vehicles and motorcycles to 5,000 units per year to determine whether the burden reduction would be appropriate for these categories as well.

Most commenters acknowledged the problems associated with inconsistent model names, but opposed the addition of a category to the EWR reporting template indicating if a model was a new (''n'') model or current model, (''h'' for historical). These commenters suggested keeping a requirement for consistent model naming, but not adding the ''n'' or an ''h'' in the EWR reporting template.

Light vehicle industry commenters objected to the proposals to add new codes for electronic stability control (ESC) and fuel or propulsion systems because the changes to their data collection system and reporting templates would be costly and overly burdensome. These commenters requested that the agency hold a public meeting to review these proposed changes to the EWR reporting templates followed by an additional comment period.

Commenters addressing the proposed amendments to part 573 did not object to requiring tire manufacturers to submit TINs for recalled tires. On the proposal to add a country of origin reporting requirement, MEMA and the Alliance requested that the proposed country of origin requirement be changed such that the information would be provided at a time later than the initial report if that information was not available at the time. TTMA objected to the proposal and said reporting country of origin information, among other things, would be overly burdensome since motor vehicles are comprised of hundreds of parts from many vendors that may reside in the U.S., but whose manufacturing facilities may be overseas.

We also received comments from Safety Research & Strategies, Inc. (SRS) and Vehicle Services Consulting, Inc. (VSCI). While SRS did not oppose the proposed amendments in the NPRM related to Part 573, it commented that NHTSA should amend its process for tire recalls. VSCI recommended that the agency increase the threshold for EWR quarterly reports for motorcycles to 2,500 units, as a compromise between the burden on smaller motorcycle manufacturers and the potential safety benefit from motorcycle EWR data.

E. Differences Between the Proposed Rule and the Final Rule

Today's final rule differs from the proposed rule in several respects. First, after review of the comments and further consideration, we have decided to raise or amend the thresholds for medium-heavy vehicles and buses and motorcycles. The NPRM proposed to keep the quarterly reporting threshold for medium-heavy vehicles and motorcycles at 500 or more vehicles per year and eliminate the threshold for buses. As explained below, the final rule raises the threshold for quarterly EWR reports on most classes of medium-heavy vehicles from 500 or more vehicles to 5,000 or more vehicles annually, with two exceptions. These exceptions are for emergency vehicles and buses. For emergency vehicles, the threshold remains unchanged at 500 or more vehicles per year. For buses, the final rule sets a threshold of 100 or more buses per year. In addition, the final rule raises the quarterly reporting threshold for motorcycles from 500 or more units to 5,000 or more units per year.

NHTSA has decided not to adopt at this time the proposals to change the light vehicle reporting template. Those proposals sought to require light vehicle manufacturers to include the vehicle type in the aggregate portion of their quarterly EWR reports, report on use of electronic stability control in light vehicles and specify fuel and/or propulsion systems when providing model designations. Instead of proceeding to issue a final rule at this time, we have decided to issue a separate NPRM on these issues in the near future. Among other things, our December 2008 NPRM did not include a proposed template or definitions for the types of fuel and/or propulsion systems. We believe that an additional round of comments on the proposed template and fuel and/or propulsion system definitions will permit more meaningful comments and consideration of the proposed template and definitions.

IV. Discussion

A. Statutory Background of Early Warning and Notification Requirements

Under the early warning reporting provisions of the TREAD Act, NHTSA is required to issue a rule establishing reporting requirements for manufacturers of motor vehicles and motor vehicle equipment to enhance the agency's ability to carry out the provisions of Chapter 301 of Title 49, United States Code, which is commonly referred to as the National Traffic and Motor Vehicle Safety Act, as amended and recodified (Safety Act). 49 U.S.C. 30166(m)(1), (2). Under one subsection of the early warning provisions, NHTSA is to require reports of information in the manufacturers' possession to the extent that such information may assist in the identification of safety-related defects and which concern, *inter alia,* data on claims for deaths and aggregate statistical data on property damage. 49 U.S.C. 30166(m)(3)(A)(i); *see also* 49 U.S.C. 30166(m)(3)(C). Another subsection authorizes the agency to require manufacturers to report information that may assist in the identification of safety defects. 49 U.S.C. 30166(m)(3)(B). Specifically, the Secretary may, to the extent that such information may assist in the identification of safety-related defects in motor vehicles and motor vehicle equipment in the United States, require manufacturers of motor vehicles or motor vehicle equipment to report, periodically or upon request of the Secretary, such information as the Secretary may request. This subsection conveys substantial authority and discretion to the agency. Most EWR data, with the exception of information on deaths and property damage claims, is reported under regulations authorized by this provision.

The agency's discretion is not unfettered. Under 49 U.S.C. 30166(m)(4)(D), the Secretary shall not impose requirements unduly burdensome to a manufacturer of a motor vehicle or motor vehicle equipment, taking into account the manufacturer's cost of complying with such requirements and the Secretary's ability to use the information sought in a meaningful manner to assist in the identification of defects related to motor vehicle safety.

The Safety Act also requires manufacturers of motor vehicles or items of motor vehicle equipment to notify NHTSA and owners and purchasers of the vehicle or equipment if the manufacturer determines that a motor vehicle or item of motor vehicle equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard. 49 U.S.C. 30118(b) & (c). Manufacturers must provide notification pursuant to the procedures set forth in section 30119 of the Safety Act. Section 30119 sets forth the contents of the notification, which includes a clear description of the defect or noncompliance, the timing of the notification, means of providing notification and when a second notification is required. 49 U.S.C. 30119. Subsection (a) of section 30119 confers considerable authority and discretion to NHTSA, by rulemaking, to require additional information in manufacturers' notifications. *See* 49 U.S.C. 30119(a)(7).

B. Matters Considered in Setting Thresholds for Early Warning Reporting

As part of our evaluation of the reporting thresholds for comprehensive reporting under the EWR rule and in this rulemaking, the agency is endeavoring to ensure that it collects a body of information that may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment. We are also considering the burden on manufacturers. In view of our authority, stated in the statute in broad terms, to require reporting of information to the extent that such information may assist in the identification of defects related to motor vehicle safety, we do not believe that it is necessary or appropriate to identify a prescriptive list of factors for delineating a reporting threshold. Nonetheless, based on our experience, the following considerations, among other things, have been identified as relevant to evaluating whether EWR information assists or would assist in the identification of safety-related defects:

- The number of manufacturers of a particular class of vehicles or equipment.
- The proportion of reporting manufacturers in a particular class of vehicles or equipment.
- The number of vehicles or equipment items at issue.
- Whether the vehicles carry large numbers of people.
- The safety risks attendant to a particular class of motor vehicles.
- The nature/amount of EWR data the manufacturers have reported or would report.
- Whether the EWR data have been useful or are likely to be useful in opening investigations into potential safety related defects and whether those investigations have resulted or may result in recalls.
- The effect that reduction and/or addition of EWR data would have on the quantity and quality of the data and ODI's ability to identify possible safety-related defects.
- ODI's ability to monitor a group of vehicles and identify possible defects without EWR data.
- The burden on manufacturers.
- The burden on NHTSA.

We did not receive any comments addressing the appropriateness of these considerations, which were listed in the NPRM. Accordingly, we conclude that,

as appropriate, these matters may be considered in delineating a reporting threshold.

The general approach of the EWR program is to collect very large amounts of data on a wide range and volume of vehicles and, to a lesser degree, equipment, and then systematically review the data, with the goal of identifying potential safety problems that may be revealed by examining the data. These data along with other information collected by and available to the agency are considered in deciding whether to open investigations.

After conducting extensive reviews of the EWR data over the last several years, NHTSA has determined that today's final rule will reduce overall the number of manufacturers that must provide comprehensive EWR submissions. The amount and usefulness of data that will no longer be required to be submitted will not be significant to NHTSA in assisting in the identification of safety related defects.

C. Light Vehicles

The current EWR regulation requires light vehicle manufacturers producing 500 or more vehicles per year to provide quarterly EWR reports to NHTSA. 49 CFR 579.21. Light vehicle manufacturers producing fewer than 500 vehicles are not required to provide quarterly reports, but must provide information related to a claim or notice alleging a death received by the manufacturer. 49 CFR 579.27.

The NPRM proposed amending 49 CFR 579.21 to raise the reporting threshold for light vehicle manufacturers from 500 to 5,000 or more vehicles produced per year. Under this approach, light vehicle manufacturers annually producing fewer than 5,000 vehicles would not provide quarterly reports containing comprehensive data, but would be required, under 49 CFR 579.27, to provide information related to a claim or notice alleging a death received by the manufacturer.

Our proposal to raise the light vehicle threshold was based in large part on our experience in collecting, reviewing and analyzing over four (4) years of EWR data. As we explained in the NPRM, the light vehicle EWR reporting sector consists of 62 manufacturers that submit an immense amount of EWR data to NHTSA every quarter. In the third quarter of 2008 alone, light vehicle manufacturers submitted EWR data with 2,700 property damage claims, 10.2 million warranty claims, 770,000 consumer complaints and 390,000 field reports [2] based on 168 million light vehicles. Light vehicle manufacturers submitted approximately 20,000 copies of field reports detailed in the third quarter of 2008 and information on approximately 1,200 death and injury incidents.

Larger volume light vehicle manufacturers submit the overall majority of the EWR data in this reporting category. Conversely, manufacturers of 5,000 or fewer light vehicles do not submit much EWR information. It is common for these smaller volume manufacturers to submit zero (0) or (1) complaint, claim or field report for a specific model and model year. This limited amount of EWR data from the relatively smaller light vehicle manufacturers is of little, if any, assistance to ODI in detecting potential safety-related defects.

As noted in the NPRM, NHTSA employs several analytical methods to identify potential concerns. The agency uses statistical methodologies to discover outliers or trends, conducts manual reviews and analyses of EWR data, and evaluates other information, such as Vehicle Owner Questionnaires (VOQs), when evaluating EWR data. Review of EWR submissions from smaller volume light vehicle manufacturers has not been productive in identifying possible safety-related defects in light vehicles.

Manufacturers producing 5,000 or more vehicles per year have filed almost all of the safety recalls initiated in the last five (5) years. Between January 2003 and January 2008, there were a total of 646 light vehicle recalls. Ninety-three percent of these recalls involved manufacturers annually producing 5,000 or more vehicles. More significantly, none of the EWR data submitted by light vehicle manufacturers producing fewer than 5,000 vehicles per year has prompted an investigation leading to a recall. In fact, all of the ODI light vehicle investigations prompted by EWR data involved vehicles from manufacturers annually producing 5,000 or more light vehicles.[3] Moreover, in that same time period, only two recalls pertaining to manufacturers producing fewer than 5,000 light vehicles per year were influenced by ODI.[4]

Ford, the Alliance, AIAM, NTEA, SBA and VSCI all supported amending 49 CFR 579.21 to raise the light vehicle reporting threshold from 500 to 5,000 or more vehicles produced per year. We did not receive any comments opposing the proposal.

Accordingly, we are adopting the amendment as proposed. Even though 32 light vehicle manufacturers will no longer submit quarterly EWR data, NHTSA's ability to monitor vehicles made by these small volume manufacturers for potential safety concerns will remain intact. Small volume manufacturers will still be required to report fatality information pursuant to 49 CFR 579.27. NHTSA will also continue to receive the traditional screening information on these vehicles, such as VOQs and TSBs.

The Alliance and VSCI requested that small-volume subsidiaries of light vehicle manufacturers, *i.e.*, subsidiaries producing fewer than 5,000 vehicles, report as independent, small-volume manufacturers. The Alliance contends that EWR data from small-volume subsidiaries is not likely to lead to a defect investigation or recall. Both the Alliance and VSCI assert that requiring small-volume subsidiaries to report places a disproportionate burden on these entities that report independently from their larger parent when compared to independent small vehicle manufacturers. In addition, the Alliance and VSCI claim EWR data from these small subsidiaries produce no safety benefit. While the Alliance requested that small-volume subsidiaries be excluded from quarterly EWR reporting, VSCI recommended that small-volume subsidiaries submit quarterly reports if there is a ''sponsorship relationship'' between the two manufacturers.[5]

[2] A field report is defined as a communication in writing, including communications in electronic form, from an employee or representative of a manufacturer of motor vehicles or motor vehicle equipment, a dealer or authorized service facility of such manufacturer, or an entity known to the manufacturer as owning or operating a fleet, to the manufacturer regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment, or any part thereof, produced for sale by that manufacturer and transported beyond the direct control of the manufacturer, regardless of whether verified or assessed to be lacking in merit, but does not include any document covered by the attorney-client privilege or the work product exclusion. *See* 49 CFR 579.4.

[3] Since the first quarter of EWR reporting, EWR light vehicle data have assisted or prompted 80 ODI investigations into potential safety defects in light vehicles, with the aggregate data or field reports (non-dealer) data sets most often providing the more useful information. Overall, these investigations led to 35 recalls involving more than 18 million units.

[4] These two recalls were NHTSA Recall No. 04V–589 and 06V–075, which involved vehicles about which ODI had information other than EWR data to prompt its investigations.

[5] VSCI recommends that ''sponsorship relationship'' be defined as:

A relationship between two manufacturers such that one vehicle manufacturer is deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer because the first manufacturer has a substantial role in the

Continued

We decline to adopt the Alliance's and VSCI's recommendations to exempt small-volume subsidiaries from filing quarterly EWR reports. We believe that data concerning the small-volume subsidiaries of large manufacturers is likely at times to produce useful information. In addition, the relationship between a small-volume subsidiary and its corporate parent are such that the subsidiary may rely on its parent for assistance in filing EWR reports.

Increasing globalization of the auto industry has increased engineering, component and design sharing as manufacturers attempt to meet competitive challenges. Sharing components with their parent corporations significantly increases the possibility that a subsidiary may share a potential safety concern with a parent. For example, the Volkswagen Group D1 platform is shared with the Bentley Continental GT and the Bentley Continental Flying Spur and BMW shares engines and other parts with Rolls Royce models. In our view, obtaining EWR data from small-volume subsidiaries is important for spotting potential safety concerns that may exist in both a subsidiary and a parent.[6] The agency believes that the benefit of the EWR data provided by these small-volume subsidiaries assists in the identification of potential safety-related defects and outweighs the minimal reporting burden.

However, the Alliance and VSCI claim that the burden to report for small-volume subsidiaries is greater on the parent than the costs imposed on small independents. The Alliance also claimed that the EWR requirements place small-volume subsidiaries, such as Bentley, Bugati, Lamborghini and Rolls Royce at a competitive disadvantage. Neither commenter, however, submitted any support for these assertions. Without support, these claims are unpersuasive. Small-volume subsidiaries often are supported by their parents in the form of technology sharing or other resources. Because such support is available to small-volume subsidiaries, we are not persuaded that these subsidiaries are unduly burdened by the EWR quarterly reporting requirement.

AIAM's comments requested NHTSA to exempt EWR data generated from vehicles in U.S. territories[7] as a ''logical outgrowth'' of the NPRM's light vehicle proposal. AIAM cited the TREAD Act provision prohibiting NHTSA from establishing unduly burdensome EWR requirements and requiring the agency to balance the costs of compliance against the usefulness of the data. *See* 49 U.S.C. 30166(m)(4)(D). According to AIAM, the cost to collect data from territories is extremely burdensome compared to the safety benefits of the data.

AIAM argues that several factors support its request for an exemption from reporting EWR data from U.S. territories. AIAM states there are relatively small numbers of vehicles sold in the U.S. territories (only one half to one percent of U.S. vehicle sales, according to AIAM), the amount of data collected is small, and the burden to collect the data is high because manufacturers typically rely upon manual entry to process EWR reporting from U.S. territories. AIAM claims that this imposes a disproportionate burden on manufacturers in relation to the small number of vehicles in the U.S. territories. Moreover, AIAM asserts that excluding U.S. territories from reporting should not significantly affect NHTSA's assessment of possible defect trends, since the vast majority of data for each model vehicle would continue to be reported and fatalities would still be reported. Thus, AIAM requests that NHTSA amend the first paragraph of 579.21 by adding: ''With respect to paragraphs (a) and (c) of this section, inclusion of data from Puerto Rico, the Northern Mariana Islands, Guam American Samoa, and the Virgin Islands is not required.''

We decline to adopt AIAM's recommendation to exempt manufacturers from reporting EWR data collected in U.S. territories. First, we do not agree that AIAM's recommendation is a ''logical outgrowth'' of our proposal to raise the light vehicle threshold to 5,000 vehicles per year and, therefore, it is outside the scope of NPRM. The NPRM did not propose to create a new exemption excluding data from a geographic region from quarterly EWR reports. Rather, the NPRM proposed amending the existing threshold, which is based upon whether a manufacturer's aggregate total of vehicles manufactured, sold, offered for sale, or imported in the United States reaches a certain volume. *See* 67 FR 45822 (July 10, 2002). We have never proposed to exempt data from territories from inclusion in a light vehicle manufacturer's quarterly EWR report once the manufacturer's aggregate total reaches the threshold. Accordingly, we decline to adopt AIAM's recommendation because it is outside the scope of the NPRM.

Even assuming that AIAM's recommendation was within the scope of the NPRM, we would not adopt it. We note that the TREAD Act amended the Safety Act to require manufacturers to report EWR data related to motor vehicle safety in motor vehicles and motor vehicle equipment in the *United States. See* 49 U.S.C. 30166(m)(3)(A) & (B). As AIAM has recognized, the Safety Act defines a ''state'' to include Puerto Rico, the Northern Mariana Islands, Guam, American Samoa and the Virgin Islands. *See* 49 U.S.C. 30102(a)(10).

Furthermore, we do not believe the burden to report EWR data on vehicles from the U.S. territories is excessive. Under the provision authorizing the EWR program, NHTSA cannot impose requirements that are unduly burdensome to a manufacturer. 49 U.S.C. 30166(m)(4)(D). When considering whether a requirement under the EWR regulation is unduly burdensome, NHTSA must take into account the manufacturer's costs of complying with the EWR requirements and NHTSA's ability to use the information in a meaningful manner to assist in the identification of safety-related defects. *Id.* AIAM did not submit any cost data to support its contention that obtaining vehicle data from the U.S. territories is unduly burdensome. Other than stating that its members manually process such data, it does not explain how the processing of this information is burdensome. AIAM acknowledges that the number of reportable EWR data points from territories is negligible. With such a small amount of EWR data to report, the cost to submit this information appears to be negligible. However, because a vehicle sold in the territories may manifest a defect found in the same model sold elsewhere in the United States, this information could be useful in detecting patterns related to the safety of that model.

Moreover, AIAM does not address the costs of reporting specific types of EWR data. For example, the burden to report consumer complaints generated from consumers in U.S. territories appears to be small. Typically, manufacturers have

development and manufacturing process of the second manufacturer's vehicle. Examples of factors that will be considered in determining the existence of a 'substantial role' include: A similarity of design between the cars produced by the two manufacturers; a sharing of engines, transmissions, platforms, interior systems, or production tooling; no payment for services or assistance provided to one manufacturer by the other; and shared import and/or sales distribution channels.

[6] Since 2004, small-volume subsidiaries referenced in the Alliance's comments have conducted fifteen (15) recalls and another model of a small-volume subsidiary was the subject of an agency investigation.

[7] AIAM cites to 49 U.S.C. 30102(a)(10), which states: ''State'' means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa and the Virgin Islands.

customer service centers that are operated either by the manufacturer in-house or outsourced to a third party. The majority of manufacturers have Internet websites available for consumer comments. Consumers can contact manufacturers by telephone or the Internet to request information or lodge a complaint. These points of contact are normally networked with a manufacturer's data system. Accordingly, we do not believe that the burden to report EWR data is unduly burdensome and AIAM offers nothing to the contrary.[8]

For the foregoing reasons, we decline to adopt the recommendations of AIAM, the Alliance and VSCI to exempt small-volume subsidiaries and reporting regarding activities in U.S. territories from EWR quarterly reporting.

D. Trailers

The EWR regulation requires trailer manufacturers producing 500 or more trailers per year to submit comprehensive EWR reports to NHTSA. 49 CFR 579.24. Trailer manufacturers annually producing fewer than 500 vehicles are not required to provide quarterly reports to NHTSA, but must provide information related to a claim or notice alleging a death received by the manufacturer. 49 CFR 579.27.

The NPRM proposed amending 49 CFR 579.24 to raise the reporting threshold for trailer manufacturers from its current level of 500 to 5,000 or more trailers per year. Under this approach, trailer manufacturers that producing fewer than 5,000 vehicles per year would not provide comprehensive reports to NHTSA, but would be required to provide fatality information under 49 CFR 579.27.

Our proposal to amend the trailer threshold was based on our experience in collecting, reviewing and analyzing EWR data over four (4) years. As we explained in the preamble to the NPRM, approximately 280 trailer manufacturers currently submit a large amount of data to NHTSA every quarter. *See* 73 FR 74101, 74107–08. For the third quarter of 2008, trailer manufacturers submitted approximately 130 property damage claims, 50,000 warranty claims, 8,000 consumer complaints and 450 field reports related to 15 million trailers. For scores of trailer manufacturers currently producing 500 or more vehicles, but fewer than 5,000 vehicles, the proposed amendment would greatly reduce their reporting burden.[9]

As pointed out in the preamble to the NPRM, NHTSA does not believe establishing a threshold level of 5,000 trailers will meaningfully reduce EWR trailer data. Although raising the threshold for the trailer category to 5,000 relieves 219 trailer manufacturers from quarterly EWR reporting, our analysis indicates that manufacturers producing 5,000 or more trailers account for nearly 80% of all trailer production volume and 70% of the EWR aggregate trailer data. We do not believe that the reduction in manufacturers, production data or aggregate data will reduce our ability to identify potential defects. Manufacturers producing fewer than 5,000 trailers per year generally do not provide robust EWR data that assists in identifying potential defects. *See* 73 FR 74101, 74107–08.

In the preamble to the NPRM, we noted that quarterly EWR data from small-volume trailer manufacturers presented little information and is unlikely to lead a defect investigation. NHTSA's traditional screening tools, such as fleet contacts, technical service bulletins and VOQs have proven effective at identifying safety concerns in the smaller volume trailers and leading to defect investigations. *Id.* The NPRM noted that ODI influenced 421 trailer recalls from 2003 to 2008.[10]

Nine (9) commenters responded to our proposal to raise the trailer threshold. RVIA, TTMA, NTEA, NATM, NMMA and SBA all supported the proposed amendment to 49 CFR 579.24. Many of these commenters concurred that the amended threshold would reduce the burden of EWR reporting on small manufacturers without any material reduction to NHTSA's ability to identify potential safety-related defects.

Big Tex Trailers Manufacturing, Inc. (Big Tex), Carry-On Trailer, Inc., and PJ Trailers Manufacturing, Inc, all manufacturers that annually produce more than 5,000 trailers, submitted comments opposing our proposal. They argue that raising the threshold would undermine NHTSA's ability to identify safety-related defects. These commenters assert that NHTSA's estimates on the number of trailer manufacturers producing fewer than 5,000 trailers are very low. These companies also claim and that raising the threshold will largely eliminate quarterly EWR reporting data for trailers with 20,000 GVWR or more (which allegedly pose a greater risk to safety than trailers less than 20,000 GVWR) even though the reporting burden is the same for large and small manufacturers. However, these three companies did not submit any data to support these claims.

Big Tex claims that there are ''hundreds'' of trailer manufacturers who are not reporting—either due to noncompliance with the EWR rule or because they produce fewer than 500 units per year. However, Big Tex did not submit any supporting information, such as trailer manufacturers subject to comprehensive EWR reporting that are not reporting. Our information indicates otherwise. NHTSA contacted over 2,300 trailer manufacturers, advised them of their EWR-reporting requirements and requested their annual production volume. Our results indicate that trailer manufacturers required to file EWR reports are doing so. Even if considerable numbers of manufacturers are not meeting their obligations, the comments do not address whether the quality and quantity of EWR data contained within the reports would provide sufficient information to assist in the identification of potential defects. Smaller trailer manufacturers often have little or no EWR data to report. Such reporting results in product lines with no reportable data or reports of small numbers of incidents from quarter to quarter that are not indicative of meaningful trends. The data gleaned from these reports are simply not helpful to NHTSA.

Big-Tex also argues that raising the threshold to 5,000 or more units per year will eliminate EWR reporting for a significant number of trailer manufacturers producing trailers over 20,000 GVWR, which Big-Tex contends pose the greatest risk to safety. Big Tex offers no basis supporting this alleged greater safety risk. Our experience indicates that trailers over 20,000 GVWR or over are generally maintained by fleets. If these trailers experience any down time, the fleet operator will lose

[8] We also believe that the data collected from U.S. territories will assist in the identification of safety-related defects. For instance, Puerto Rico has a population of slightly fewer than four million people, which is more than 24 states and the District of Columbia. Puerto Rico has over 2.6 million registered vehicles, which is more than twenty-one (21) states. In our view, losing such a large volume of vehicles will hinder our ability to identify potential safety issues.

[9] Trailer manufacturers that produce fewer than 5,000 trailers annually would be required to provide information related to a claim or notice alleging a death received by the manufacturer. 49 CFR 579.27.

[10] Jayco, a manufacturer of recreational vehicles and trailers, correctly pointed out that the statement in the NPRM regarding the number of influenced trailer recalls requires clarification. The NPRM failed to explain that we were unable to determine the production levels for a number of trailer manufacturers conducting recalls at the time of the recall. We could not determine an annual production level for the manufacturer for 140 recalls. Of the remaining recalls, nearly 160 were conducted by trailer manufacturers producing more than 5,000 trailers per year. There were also 121 trailer recalls conducted by trailer manufacturers producing fewer than 5,000 trailers per year. For the 121 trailer recalls conducted by trailer manufacturers producing fewer than 5,000 trailers, 43 of those recalls were influenced by ODI.

potential revenue. Thus, these fleets have an economic incentive to regularly maintain and inspect their trailers. Moreover, fleet operators often communicate directly with manufacturers regarding maintenance and safety. As a result, heavier trailers do not necessarily pose a greater defect risk than other trailer types. Our experience with investigations of trailers over 20,000 GVWR does not support the premise that these trailers pose a greater defect risk.[11]

Big-Tex's claim that raising the reporting threshold to 5,000 or more trailers per year will cause a significant loss of EWR data for trailers over 20,000 GVWR is incorrect. Our evaluation shows that raising the threshold to 5,000 or more trailers annually will still result in receiving ninety-six (96) percent of the current production data being submitted to NHTSA from manufacturers producing trailers over 20,000 GVWR. Because the aggregate data in this vehicle category has not proven particularly useful, this reduction will not significantly reduce our ability to adequately identify potential safety-related defects in trailers over 20,000 GVWR.

Big-Tex also states that the reporting burdens for larger trailer manufacturers are similar to smaller manufacturers. Big-Tex provides no data to support this claim. NHTSA's analysis of EWR trailer data weighed the costs of reporting EWR data with the agency's ability to use it to identify potential safety defects. Our evaluation of trailer EWR data indicates that data from trailer manufacturers producing more than 5,000 trailers per year have more depth, tend to be consistent from quarter to quarter and are most likely to provide assistance in detecting defects. The same cannot be said for EWR data from trailer manufacturers producing fewer than 5,000 per year.

Accordingly, we are amending 49 CFR 579.22 to raise the reporting threshold for trailer manufacturers to 5,000 or more vehicles produced annually.

E. Buses

Medium-heavy vehicle and bus manufacturers producing 500 or more units per year currently submit quarterly EWR reports to NHTSA. 49 CFR 579.22. There are approximately 20 bus manufacturers submitting quarterly EWR reports to NHTSA. For the third quarter of 2008, bus manufacturers submitted, approximately 6 property damage claims, 74,000 warranty claims, 1,000 consumer complaints and 2,700 field reports on 750,000 buses. They also submitted approximately 150 copies of field reports.

The preamble to the NPRM stated that there is a significant need to amend the threshold level of reporting for manufacturers of buses because buses—whether school buses, transit buses, or motor coaches—have unique characteristics. These vehicles carry more occupants than other vehicle types, which increases safety risks on a per-vehicle basis. Because of the potential for multiple fatalities and injuries from a single crash, there is greater urgency for identifying safety concerns at the earliest possible time. Our NPRM noted that several recent bus crashes reinforced the importance of creating a special EWR status for bus manufacturers similar to that of child restraint manufacturers. *See* 73 FR 74101, 74108.

Our proposal considered factors for different thresholds, such as the likelihood of capturing useful data and bus safety risks, balanced against data submission burdens and the agency's costs. Our experience with recalls by bus manufacturers producing fewer than 500 vehicles per year reinforced the need to expand early warning reporting. Further, the safety risk presented by bus defects outweighs the costs of start-up and on-going reporting of EWR data. *Id.*

NTEA and SBA both commented on our proposal to eliminate the reporting threshold for manufacturers of buses. Both opposed the proposal. We did not receive any comments from manufacturers of buses. SBA noted that NHTSA's reference to bus crashes does not address whether EWR reporting would have prevented those crashes. It recommended that NHTSA reassess changing the EWR bus reporting threshold, and determine whether the burden reduction analysis stated for the light vehicle and trailer categories would be appropriate for buses. NTEA recognized the greater safety concern for buses, but urged NHTSA to revise its proposal to include a low, small-volume threshold. NTEA asserts that NHTSA's proposal is too broad, creating large burdens for small manufacturers and capturing manufacturers not intended to report under the EWR rule as bus manufacturers. Specifically, NTEA argues that a company building one bus would be required to file quarterly reports, which would be a significant burden. Furthermore, NTEA states that the agency's definition of a bus (a motor vehicle with motive power, except a trailer, designed for carrying more than 10 persons, *see* 49 CFR 579.4(b)) is so broad that the proposal would require all kinds of manufacturers, including manufacturers of limousines with very low production levels, to submit quarterly EWR reports. As a result, NTEA believes, the proposal sweeps up hundreds of smaller manufacturers. NTEA contends that the agency's estimate that only seventeen bus manufacturers would become obligated to make quarterly EWR reports is very low. But NTEA did not submit names of bus manufacturers that would be required to report if the reporting threshold were lowered.

NHTSA estimated that seventeen manufacturers would be required to submit quarterly EWR reports if it eliminated the bus threshold. The agency stated that most of these manufacturers produce hundreds of buses per year, but were below the existing reporting threshold. However, as NTEA points out, the proposed elimination of the EWR bus reporting threshold captures many manufacturers that have an annual production of 100 or fewer buses. Our proposal intended to capture additional manufacturers of school buses, transit buses and motor coaches, not very small manufacturers of limousines and similar vehicles.

The distinguishing characteristic of buses is that they transport numerous people, and a single bus crash may result in many injuries and fatalities. The bus crashes we referenced, as SBA pointed out, were not singled out to suggest that EWR data would have prevented those particular bus crashes. Their purpose was simply to illustrate that bus crashes can result in multiple deaths and injuries. Because of this characteristic, we believe that there is a strong safety interest in improving our ability to identify potential defects in buses. This benefit outweighs the burden on reporting for these additional bus manufacturers.

Bus manufacturers producing fewer than 500 buses per year conduct a significant number of recalls every year. Since 2003, there have been approximately 39 recalls involving 8,000 buses by bus manufacturers producing fewer than 500 buses annually. Because of passenger density, defect related safety risks could affect tens of thousands of passengers per year. Moreover, NHTSA's traditional data collection methods are not as robust for buses as compared to light vehicles and other vehicles. For example, vehicle owner complaints, which are a vital source of information on light vehicles, are rare for buses. Given the potential harm from just one bus crash, NHTSA concludes that

[11] For example, in 2008, trailer manufacturers conducted a total of 116 recalls, with 99 of the recalls involving trailers less than 26,000 GVWR. Of the 116 recalls, ODI influenced 85 recalls, with 75 of those influenced recalls involving trailers less than 26,000 GVWR.

reducing the threshold for reporting by bus manufacturers to permit identification of potential defects is appropriate.

Consideration of comments from SBA and NTEA led NHTSA to re-examine the EWR reporting threshold for buses including the utility of the data produced. At the outset, we recognize that very small volume manufacturers would not submit EWR data robust enough to permit expeditious identification of potential defects. Therefore, data from manufacturers producing few buses will not be required to report. However, due to the strong safety concerns with regard to buses, expanded reporting is necessary. We believe that an appropriate reporting threshold is 100 buses per year. Of the seventeen bus manufacturers identified in the NPRM as producing fewer than 500 buses per year, fifteen produce 100 or more buses annually.

In addition, NHTSA analyzes EWR data submitted by bus and medium-heavy vehicle manufacturers on a quarterly basis. In this analysis, agency staff rank potential issues by vehicle make and model. Data from each quarter identify dozens of makes and models of buses and medium-heavy vehicles that require further evaluation by ODI. In the last six quarterly evaluations, NHTSA has preliminarily identified fifteen bus models from seven different manufacturers for further evaluation.

The NPRM estimated that the costs for each additional bus manufacturer would include a one-time start-up cost of approximately $3,500 and an annual reporting cost of approximately $13,000. *See* 73 FR 74101, 74109. SBA requested that we reconsider the burden reporting imposes on small business bus manufacturers. That agency did not submit any cost data or estimates for us to consider. Indeed, none of the commenters submitted cost information to assist in our determination of the cost of quarterly reporting for small businesses manufacturing buses. Considering the potential safety consequences and the considerable potential value EWR data may have in helping prevent bus crashes, fires or related injuries, the compliance costs are not unduly burdensome. As discussed further in section VI.B, below, ten (10) of the fifteen bus manufacturers that produce 100 or more buses annually are considered small businesses according to criteria used for analysis under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.* For the reasons explained in that section, we do not believe that this burden will be a significant economic impact on these bus manufacturers. In our view, setting the EWR reporting threshold to require EWR quarterly reports from bus manufacturers producing 100 or more buses per year strikes the correct balance between the interests of smaller manufacturers and public safety.

Based upon the foregoing, we are amending 49 CFR 579.22 to lower the current reporting threshold for bus manufacturers from 500 or more buses annually to 100 or more buses per year. We are also amending 49 CFR 579.22 to distinguish buses from other medium-heavy vehicles so manufacturers producing both buses and medium-heavy vehicles do not aggregate production of all their products for EWR reporting purposes. Thus, a manufacturer that produces both buses and other medium heavy vehicles does not have to also submit quarterly EWR reports for its medium-heavy vehicles until its annual production of those vehicles reaches the medium-heavy reporting threshold.

F. Medium-Heavy Vehicles

Medium-heavy vehicle and bus manufacturers annually producing 500 or more units have been required to submit quarterly EWR reports to NHTSA. 49 CFR 579.22. The vehicles in this category include emergency vehicles, recreational vehicles, trucks, tractors or others.[12] 49 CFR 579.4(c). For medium-heavy vehicles (other than buses), we proposed to keep the quarterly reporting threshold at 500 or more vehicles produced per year.

The NPRM noted that approximately 65 emergency vehicle, recreational vehicle, truck, and tractor manufacturers were submitting quarterly EWR reports to NHTSA. *See* 73 FR 74101, 74109–10. For the third quarter of 2008, these manufacturers submitted approximately 125 property damage claims, 480,000 warranty claims, 14,000 consumer complaints and 34,000 field reports on 6 million vehicles. *Id.* These vehicle manufacturers report data on approximately 300,000 potential products-components (the number of distinct models reported by these manufacturers multiplied by the number of components in EWR). In addition to the large amount of aggregate data submitted for the third quarter of 2008, these manufacturers reported approximately 40 death and injury incidents and provided 2,000 copies of non-dealer field reports.

The December 5, 2008 NPRM indicated that we would leave the EWR reporting threshold for medium-heavy manufacturers (excluding buses) unchanged due to a combination of factors, such as the proportion of manufacturers that would no longer have to report, the proportion of vehicles that would no longer be subject to reporting and the effect that the reduction of EWR data would have on ODI's ability to detect potential safety defects. *Id.*

SBA and NTEA both commented on our proposal to keep the medium-heavy reporting threshold at 500 or more vehicles. Both objected to keeping the threshold unchanged. SBA recommended that NHTSA reassess the benefits and burdens of medium-heavy vehicle EWR reporting and determine if burden reduction would be appropriate. Similarly, NTEA requested that the agency reassess its proposal and afford small volume medium-heavy manufacturers the same regulatory relief as the small volume manufacturers of light vehicles and trailers. NTEA noted that several of the recalls referenced by NHTSA in the preamble would not have been affected by an increase to the medium-heavy vehicle reporting threshold. NTEA also pointed out increasing the reporting threshold for the medium-heavy category to 5,000 or more vehicles would cause a loss of six percent of the aggregate data and thirteen percent of production data. NTEA argued that this analysis of medium-heavy vehicles could be further refined depending upon the type of medium-heavy vehicle. In NTEA's view, these analyses would likely show that raising the threshold would have little effect for certain vehicle types.

Our NPRM analysis focused on the number of manufacturers, by vehicle type, that would no longer have to report at certain threshold levels, the amount of EWR data lost by raising the threshold, the effect of data reduction on our ability to identify possible defects that might be safety related and our ability to monitor medium-heavy vehicles without EWR data. Examination of varying threshold levels (1,000, 2,500 and 5,000) revealed that manufacturers in certain vehicle types would no longer submit comprehensive EWR reports. The largest reduction of manufacturers would occur in the emergency vehicle category (50 percent, 75 percent and 75 percent, respectively). Similarly, we found that the greatest percentage loss of aggregate data from the threshold changes would be within the emergency vehicle category (45

[12] For medium-heavy vehicle and bus category, vehicle type means: Truck, tractor, transit bus, school bus, coach, recreational vehicle, emergency vehicle or other. 49 CFR 579.4(c). While buses are included within this category, they have been addressed previously in section E of this notice and are not included in the following discussion.

percent, 100 percent and 100 percent, respectively). The NPRM cited prior recalls that, in our view, illustrated a need to continue to obtain EWR data from small volume manufacturers in order to receive timely information.[13]

In light of the SBA and NTEA comments, we have reviewed relevant information, including the loss of EWR data that would occur if the threshold were raised. Raising the threshold for medium-heavy vehicles, even slightly, would foreclose EWR reporting by significant numbers of emergency vehicle manufacturers.

In our view, emergency vehicle reports are important for safety. For purposes of EWR, these vehicles include ambulances and fire trucks. This has been reflected historically in EWR reports wherein manufacturers' reports on emergency vehicles (a type of vehicle in EWR reporting) have included ambulances and fire trucks. These vehicles have characteristics that are distinguishable from other medium-heavy vehicles. They operate under high stress conditions, transport emergency personnel, and carry individuals in need of urgent medical care.

Raising the EWR quarterly reporting threshold from 500 or more would severely impact the EWR program's ability to monitor emergency vehicles. At a threshold level of 1,000 or more vehicles, 50 percent of all emergency vehicle manufacturers would no longer report EWR data, presenting a loss of 47 percent of production and 45 percent of aggregate data. At a threshold level of 2,500 or more vehicles, 75 percent of all emergency vehicle manufacturers would no longer report EWR data, a loss of 73 percent of production and all of the aggregate data currently in ARTEMIS. The elimination of such a significant amount of emergency vehicle production and EWR data would severely impact the ability of NHTSA to identify potential defect trends in these vehicles.

Recent use of EWR medium-heavy vehicle data illustrates the negative impact stemming from significant losses of emergency vehicle EWR data. NHTSA analyzes the medium and heavy vehicle EWR data each quarter. The highest ranked vehicles—those with an increasing claim trend or a claims spike—present potential defect issues. For vehicles ranked the highest, NHTSA reviews other available information, such as VOQs, TSBs, and existing recalls, to further assess any potential defect risk. In the last six quarters, six different makes and models of emergency vehicles were identified within the highest ranked vehicles. Each of these vehicles was made by a manufacturer annually producing fewer than 2,500 vehicles. Finally, we note there have been 65 recalls of emergency vehicles in the last ten years, with more than half of those recalls conducted by manufacturers producing fewer than 5,000 vehicles annually. Therefore, raising the EWR reporting threshold for emergency vehicles would impair the identification of potential defects in these specialty vehicles.

NHTSA also revisited its analyses of the appropriate threshold for other medium-heavy vehicle types. The agency has decided to raise the threshold for these vehicle types: Recreational vehicle, truck, tractor and other. Raising the EWR reporting threshold for these medium-heavy vehicle types would not have a detrimental effect on identifying possible defects. Using the EWR data from the third quarter of 2008, raising the threshold 500 to 1,000 or more for recreational vehicle, truck, tractor and other medium-heavy vehicles (excluding buses and emergency vehicles) per year would result in a small loss of production data and aggregate data (one percent and six tenths of one percent, respectively). Raising the reporting threshold to 2,500 or more for recreational vehicle, truck, tractor and other medium-heavy vehicles (excluding buses and emergency vehicles) results in a four percent loss of production data and a three percent loss of aggregate data. Increasing the reporting threshold to 5,000 or more for recreational vehicle, truck, tractor and other (excluding buses and emergency vehicles) results in a loss of ten percent of the production volume and a six percent loss of the aggregate data. In our view, raising the threshold to 5,000 or more would not significantly impair identification of potential safety-related defects in recreational vehicle, truck, tractor and other medium-heavy vehicles (excluding buses and emergency vehicles).

Indeed, recent reviews of EWR medium-heavy vehicle data from recreational vehicle, truck, tractor and other medium-heavy vehicles (excluding buses and emergency vehicles) indicate that the majority of the vehicles with the highest ranking for further review are produced by manufacturers building more than 5,000 or more vehicles per year. Even though this method is normalized for production, 95 percent of the vehicles reviewed were from manufacturers that produced 5,000 or more units per year. Further, EWR data from manufacturers producing fewer than 5,000 recreational vehicle, truck, tractor and other medium-heavy vehicles (excluding buses and emergency vehicles) have not prompted an investigation or recall. To date, the EWR data for medium-heavy truck manufacturers annually producing more than 5,000 vehicles has prompted or influenced ten (10) investigations, several informal inquires, eight (8) recalls and one (1) owner notification program.

Based upon the foregoing, we are amending 49 CFR 579.22 to raise the medium-heavy vehicle (other than buses and emergency vehicles) EWR comprehensive reporting threshold from its current level of 500 to 5,000 or more vehicles produced per year. For emergency vehicles, we have decided to maintain the reporting threshold at its current level of 500 or more vehicles per year. Consistent with our approach towards bus manufacturers, we are amending 49 CFR 579.22 to treat emergency vehicles and other medium-heavy vehicles separately so that manufacturers producing both emergency vehicles and other medium-heavy vehicles, such as recreational vehicles, trucks or tractors, do not aggregate production for EWR reporting purposes. Thus, a manufacturer that produces both emergency vehicles and other medium heavy vehicles does not have to also submit quarterly EWR reports for its non-emergency vehicles unless its annual production of those vehicles reaches 5,000 or more.

G. Motorcycles

The EWR regulation requires motorcycle manufacturers annually producing 500 or more units to submit quarterly EWR reports to NHTSA. 49 CFR 579.23. The December 2008 NPRM proposed leaving the existing EWR motorcycle reporting threshold unchanged. We based this decision on a combination of factors, including the proportion of manufacturers impacted by any change, the proportion of motorcycles that would no longer be included in reports due to a threshold change, the effect reducing EWR data would have on our ability to identify possible safety-related defects, and the safety risks attendant to

[13] NTEA commented that the recalls we referenced were not related to medium-heavy vehicles that produce fewer than 5,000 vehicles. After further review, it appears that Recall number 03V–035 should have been 04V–035, which involve recreational vehicles. Recall number 03V–465 appears to be a mistake. It involves only recreational trailers and not any recreational vehicles. The remaining recalls all involve manufacturers of medium-heavy vehicles that produce fewer than 5,000 vehicles annually. *See* 73 FR 74109–10.

motorcycles.[14] *See* 73 FR 74101, 74110–11.

The SBA and VSCI both commented on our proposal. NHTSA did not receive comments from any other individuals or entities on this issue. Both the SBA and VSCI suggested changing the motorcycle threshold. SBA recommended that NHTSA reassess the benefits and burdens of EWR reporting. Similarly, VSCI contended that there is a threshold above 500 which addresses safety issues noted in NHTSA's proposal and reduces burdens on small-volume motorcycle manufacturers.

SBA's and VSCI's comments led the agency to re-examine whether raising the motorcycle EWR reporting threshold would be detrimental to identification of possible defects. As NHTSA gains additional EWR experience, we have continued to refine our analytical processes and reviews of motorcycle EWR data. We have decided to raise the threshold for motorcycles from 500 to 5,000 or more units per year. Raising this threshold will not impair NHTSA's ability to identify possible motorcycle safety defects.

Twenty-three motorcycle manufacturers presently provide EWR quarterly reports to NHTSA. In the third quarter of 2008, these twenty-three manufacturers submitted approximately two property damage claims, 104,000 warranty claims, 4,000 consumer complaints and 15,000 field reports for nearly seven million vehicles. These motorcycle manufacturers report data on approximately 37,000 potential products-components. Analyzing EWR data received in the 3rd quarter of 2008, shows that raising the motorcycle reporting threshold from 500 to 1,000 would reduce reported production and aggregate data by one-tenth of one percent and four-hundredths of one percent, respectively. A reporting threshold of 2,500 motorcycles or more would lower the production and aggregate data by one percent. Increasing the motorcycle reporting threshold to 5,000 or more would cause less than three percent of the production volume and seven percent of the aggregate data to not be reported. Raising the threshold to 5,000 or more units annually would relieve eight small motorcycle manufacturers from providing quarterly EWR reports. In our view, raising the threshold to 5,000 or more units per year would not impact NHTSA's identification of potential safety-defects in motorcycles.

Based on a review of quarterly EWR motorcycle data, EWR data from manufacturers producing 5,000 or more motorcycles annually appear to provide more assistance in identifying potential issues than manufacturers producing fewer than 5,000 motorcycles per year. To date, EWR data from manufacturers producing 5,000 or more motorcycles per year has prompted or influenced five (5) investigations, several informal inquires and four (4) recalls. In contrast, EWR data from manufacturers producing fewer than 5,000 motorcycles have not prompted an investigation or recall. Overall, significantly more recalls are conducted by large-volume motorcycle manufacturers. Motorcycle manufacturers have conducted 277 recalls since 2003; over 80% of these recalls involved motorcycles from manufacturers annually producing 5,000 or more motorcycles

Based upon the foregoing, we are amending 49 CFR 579.23 to raise the EWR comprehensive reporting threshold from 500 to 5,000 or more motorcycles annually. Manufacturers producing fewer than 5,000 motorcycles per year will be required to submit information on fatalities pursuant to 49 CFR 579.27.

H. Response to the National Truck Equipment Association Petition for Rulemaking

In April 2006, the National Truck Equipment Association (NTEA) petitioned the agency to amend the EWR rule to raise the EWR comprehensive reporting threshold for all vehicles 500 to 5,000 vehicles annually, including final-stage manufacturers, or, alternatively, permit final-stage manufacturers, regardless of their annual production, to report on a limited basis under 49 CFR part 579.27.

NHTSA proposed denying NTEA's petition in the December 2008 NPRM. *See* 73 FR 74101, 74113. NTEA did not comment specifically about our proposed denial. Instead, NTEA chose to comment on specific vehicle types such buses and other medium-heavy vehicles, as noted above in sections IV.E and IV.F.

Although this final rule does not create the separate category for final–stage manufacturers sought by NTEA, it amends the reporting threshold applicable to the majority of final-stage manufacturers producing light vehicles, trailers and medium-heavy vehicles. As explained in sections IV.E and IV.F above, today's final rule treats buses and emergency vehicles differently—those vehicles have a lower reporting threshold than the other medium-heavy vehicles. Accordingly, the requirement to submit comprehensive EWR reports varies depending on the type of vehicles produced. Final-stage manufacturers annually producing 5,000 or more light vehicles, trailers or medium-heavy vehicles, other than buses or emergency vehicles, are required to submit quarterly EWR data. Moreover, NTEA's comments recognized a need to treat those vehicle types differently than others. Therefore, based upon the foregoing, NTEA's petition is denied.

I. Data Consistency

Manufacturers are required to follow certain filing naming conventions when submitting their quarterly EWR reports. 49 CFR 579.29(a). The naming conventions do not specify a format for providing the model names. Manufacturers are under no obligation to provide the same make, model [15] and model year[16] name from quarter to quarter, although the overwhelming majority of manufacturers do so.

The NPRM identified our difficulties in analyzing EWR data due to inconsistent model naming across different EWR quarters. *See* 73 FR 74101, 74113–14. To prevent future inconsistencies, we proposed amending 49 CFR 579.29 to require manufacturers to provide identical make, model and model year information for products or to timely notify NHTSA of changes in these data. Our proposal did not intend to preclude manufacturers from changing or creating another name when a ''new'' product (*e.g.*, a new model and/or model year) is reported. The amendment sought to require that a product's make, model, and model year are consistent from the first time it is given throughout subsequent reports. We noted that if this proposal were adopted, we planned on implementing a screening process to ensure data integrity and to reject quarterly submissions with inconsistent product names.

[14] We also observed that motorcycle fatality and injury trends have risen over the past several years. While we remain concerned about these increasing trends, closer examination reveals that factors such as alcohol use and a declining use of motorcycle helmets played an integral role in these trends. *See* Traffic Safety Facts 2007 Data Motorcycles, DOT HS 810 990.

[15] ''Model'' means a name that a manufacturer of motor vehicles applies to a family of vehicles within a make which have a degree of commonality in construction, such as body, chassis or cab type. For equipment other than child restraint systems, it means the name that the manufacturer uses to designate it. For child restraint systems, it means the name that the manufacturer uses to identify child restraint systems with the same seat shell, buckle, base (if so equipped) and restraint system. 49 CFR 579.4.

[16] ''Model year'' means the year that a manufacturer uses to designate a discrete model of vehicle, irrespective of the calendar year in which the vehicle was manufactured. If the manufacturer has not assigned a model year, it means the calendar year in which the vehicle was manufactured. 49 CFR 579.4.

Our intention to reject quarterly reports raised the issue of how a manufacturer notifies NHTSA that it plans to report a new model. We proposed amending the EWR reporting template to add a new field so manufacturers could indicate the introduction of a new make, model and model year vehicle. A manufacturer would populate the field with an ''n'' for a make, model, model year vehicle with a new model name in its EWR submission for the quarter that the new model debuts. Otherwise, manufacturers would provide an ''h'' to indicate that the make, model, model year is not new, but a historical product.

We received comments from the Alliance, Ford and TTMA on this issue. The Alliance and Ford agreed with the need for consistent model naming, while TTMA opposed our proposal. The Alliance, however, urged the agency not to revise the reporting templates by adding an additional field for entering an 'n' for a 'new' model or an 'h' for a 'historical' model.'' The Alliance believes that revising the current templates would impose substantial costs and burdens upon the manufacturers. TTMA is concerned that the designations ''h'' and ''n'' would be prone to data entry errors.

We have decided to adopt the amendment to 49 CFR 579.27 as proposed, with a minor revision. Based upon the comments and our further reassessment of our data capabilities, we will not require manufacturers to advise the agency of a new or historical product. Our data system has the capability to cross-check the make, model and model year in new EWR reports with the make, model and model year of EWR reports on record. After performing this cross-check, NHTSA will be able to identify which model names are ''new'' and which are ''historical'' and identify inconsistent model names. If a manufacturer submits a quarterly EWR report with a model name that is not consistent with a model name previously submitted, the system will automatically reject the report. On the other hand, if the quarterly EWR report includes a new model, our system will accept the quarterly EWR report.[17] Therefore, modification of the template and use of an ''n'' or ''h'' designation is unnecessary.

Based on the foregoing, we are amending 49 CFR 579.27(a) to require model naming consistency without adopting changes to the EWR reporting template.

J. Correction to the Definition of Other Safety Campaign

The NPRM noted that an inconsistency in the definitions of ''other safety campaign'' and ''customer satisfaction campaign'' in 49 CFR 579.4. The inconsistency resulted from a misplaced closed parenthetical in the definition of ''other safety campaign.'' In both terms, the parentheses are meant to clarify that the definition excludes certain materials distributed by a manufacturer that are unrelated to a defect. The parentheses in the definition of ''customer satisfaction campaign'' are located immediately proceeding the term ''excluding'' and immediately after the term ''first sale.'' The definition of ''customer satisfaction campaign'' states in pertinent part: ''Customer satisfaction campaign * * * means any communication by a manufacturer * * * relating to repair, replacement, or modification of a vehicle * * * the manner in which a vehicle or child restraint system is to be maintained or operated (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale); or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment.'' In the definition of ''other safety campaign,'' the closed parenthetical in the definition is not immediately following the term ''first sale'' as intended, but immediately after the word ''equipment.'' Thus, the definition of ''other safety campaign'' currently reads in pertinent part: ''Other safety campaign means an action in which a manufacturer communicates with owners and/or dealers in a foreign country with respect to conditions * * * that relate to safety (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale; or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment).'' To correct this inconsistency, we proposed that the closed parenthesis in the definition of ''other safety campaign'' should be moved to immediately after the term ''of first sale'' to be consistent with the definition of ''customer satisfaction campaign.'' We did not receive any comments opposing the proposed change. Accordingly, the amendment to the definition of ''other safety campaign'' is adopted as proposed.

K. Lead Time

NHTSA proposed a one (1) calendar year lead time for manufacturers to adopt to the proposed changes to the EWR regulation. The amendments proposed requiring sufficient lead time included requiring quarterly EWR reports from all bus manufacturers, consistent product naming, reporting light vehicle types, reporting additional light vehicle components and requiring fuel and/or propulsion identification. For the amendments proposing to raise the EWR reporting thresholds for light vehicles and trailers, we proposed 30 day effective dates.

We received comments from the Alliance, AIAM and TTMA, on our proposed lead time, but those comments were, in large part, responsive to the proposals that would require manufacturers to change their IT systems and the EWR templates for reporting. Those proposals are not being adopted in today's final rule. Other than TTMA, which agreed with our proposed lead times, we did not receive any comments on our proposed lead time for amendments to the EWR reporting thresholds.

Because bus manufacturers will need time to install systems or modify existing systems to meet the amendments adopted in this final rule, the effective date of the reporting requirement for bus manufacturers producing 100 or more buses per year but not currently required to report comprehensive data will be one year from today's date. Accordingly, for these bus manufacturers, the first quarterly EWR reports that must be filed are for the quarter in which this requirement becomes effective. For all other amendments adopted by today's final rule, the effective date will be 30 days from today's date.

[17] We will configure ARTEMIS to identify new, historical and inconsistent model designations based upon the reporting year and model year. ARTEMIS will classify models as ''new'' when the reporting year and model year are within specific parameters. These parameters are generally based upon when manufacturers introduce their new models. Most manufacturers introduce new models in the third quarter of the prior calendar year of the designated model year (for instance, most 2010 models are introduced in September 2009). Some models are introduced earlier as early model year entries. Thus, ARTEMIS will accept new model names that are submitted in an EWR report if the model year is equal to or fewer than 2 years from the report year. This can be expressed by the formula: (Model year (MY) = Reporting year (RY), MY = RY+1, or MY = RY+2). However, if the model year of the ''new'' model is less than the report year or greater than 3 years, the submission will be rejected because of an inconsistent model name. ARTEMIS identifies historical model names by cross-checking each EWR submission with prior EWR submissions to match identical model names and model years.

L. Amendments to Information Required To Be Submitted in a Part 573 Defect or Noncompliance Information Report

Under the Safety Act, manufacturers must notify the agency if either the manufacturer decides or the agency determines that a safety-related defect or noncompliance with a Federal Motor Vehicle Safety Standard exists in a motor vehicle or item of motor vehicle equipment. *See* 49 U.S.C. 30118 and 30119. NHTSA has significant discretion to specify the contents of this notice. 49 U.S.C. 30119(a)(7). NHTSA's regulation governing content of defect or noncompliance notices submitted to NHTSA is located at 49 CFR part 573, Defect and Noncompliance Responsibility and Reports. Among other things, Part 573 delineates the information to be contained in the notification to NHTSA in section 573.6.

The December 2008 NPRM identified two additional types of information that, if provided in a Part 573 Defect or Noncompliance Information Report, would further assist the agency and the public to identify vehicle components or motor vehicle equipment involved in a recall. One proposal would amend subsection 573.6(c)(2)(iii) to require that tire manufacturers submit a list of unique Tire Identification Numbers (TINs) or a range of TINs corresponding to recalled tires. The NPRM also proposed amending 573.6(c)(2)(iv) to require manufacturers to identify the country of origin of a recalled component. To implement the proposed amendment for TIN data, we proposed changing section 573.9 to allow TINs to be submitted as an attachment to an e-mail or by upload to NHTSA's ARTEMIS database. These are discussed in more detail below.

1. Amendment to Subsection 573.6(c)(2)(iii)

Subsection 573.6(c)(2)(iii) requires the manufacturer of a defective item of motor vehicle equipment to identify the item containing the defect and give other identifying information. Specifically, subsection 573.6(c)(2)(iii) requires manufacturers to identify the equipment by the generic name of the component (tires, child seating systems, axles, etc.), part number, size and function if applicable, the inclusive dates (month and year) of manufacture if available and any other information necessary to describe the items.

In tire recalls, tire manufacturers generally provide the brand name, model name, size of the recalled tire, and the applicable build dates. Build dates provide limited assistance to consumers seeking to determine if a tire is subject to a recall because there is no ''build date'' on a tire. Rather, the tire build date (actually, the week in which a tire was made) is encoded within the Tire Identification Number (TIN) molded on the tire sidewall. Accordingly, we proposed amending 49 CFR 573.6(c)(2)(iii) to require tire manufacturers to submit a list of all unique TINs for defective tires. If providing all unique TINs would prove too costly, we proposed that tire manufacturers could provide a range of TINs.

Two commenters addressed this proposal. RMA and Safety Research & Strategies, Inc. (SRS) expressed support for requiring manufacturers to identify the TINs, or range of TINs, in Part 573 reports. RMA noted that requiring manufacturers to provide a complete listing of TINs and/or a range of TINs in 573 reports is not a significant burden and that many manufacturers already do so. We confirmed RMA's statement. Many tire manufacturers do provide the range of TINs for recalled tires in their Part 573 reports. RMA requested that NHTSA allow manufacturers the flexibility to provide TIN information as either a complete list or a range, depending on the nature of the recall at hand.

We have considered the comments and are adopting the requirement that TIN information be provided in the 573 report for a tire recall. We have also decided to require that manufacturers provide this information as a range. A range of TINs will be easier for the agency to process and integrate into its data systems and offers fewer opportunities for errors.

2. Amendment to Section 49 CFR 573.9

In order to facilitate the submission of TINs with a manufacturer's Part 573 Report, we proposed amending section 573.9 to provide for the submission of unique TINs in an electronic format that can be e-mailed or submitted through the Internet. Because today's final rule requires a range of TINs, we have decided against amending section 573.9. Our proposal amending section 573.9 would have facilitated the submission of unique TINs, which could consist of many thousands of individual TINs, depending on the size of the tire recall. Providing a range of TINs does not present the same challenges as submitting or processing a large database of unique TINs. A range can be submitted within a Part 573 Report. Accordingly, we have decided not to adopt the proposal amending section 573.9.

3. Amendments to Subsection 573.6(c)(2)(iv)

NHTSA also proposed amending subsection 573.6(c)(2)(iv). That subsection concerns the identification of the manufacturer that supplies the defective or noncompliant component to the manufacturer reporting the defect to NHTSA. It requires the reporting manufacturer to identify the component and the manufacturer of the component by name, address and telephone number. 49 CFR 573.6(c)(2)(iv). If the reporting manufacturer does not know the identity of the manufacturer of the component, it must identify the entity from which it was obtained. *Id.*

Increasing globalization of the motor vehicle industry has made identifying the country of origin of recalled components more difficult. Information provided in a Part 573 Report may only identify a distributor's location and not reveal the location of manufacture. It is important for the agency to know where a recalled component is fabricated or assembled so NHTSA can monitor imported products.

Therefore, we proposed amending subsection 573.6(c)(2)(iv) to require reporting manufacturers to provide a non-compliant or defective component's country of origin. The country of origin for this purpose is where assembly or manufacture is completed. Accordingly, we proposed amending subsection 573.6(c)(2)(iv) to add the phrase ''and its country of origin (*i.e.*, final place of manufacture or assembly)'' immediately following ''shall identify the component.''

We received several comments on this proposal. TTMA objected to the proposal as overly burdensome. The organization states that motor vehicles are comprised of hundreds of parts from many vendors that may reside in the U.S., but whose manufacturing facilities may be overseas. It notes that a reporting manufacturer may not be aware a component was imported. TTMA added that a recalling manufacturer is responsible for corrective action and a part's country of origin is irrelevant.

NHTSA does not agree with the TTMA's assessment. While some motor vehicles are comprised of parts supplied by many different vendors with overseas and domestic production facilities, a vehicle manufacturer can discern, or should, in the agency's view, be able to discern, where the component was completed. It is not unreasonable for vehicle manufacturers to know and then report where the components of their products are made. A vehicle manufacturer's responsibility for taking

corrective action for the defect or noncompliance (49 U.S.C. 30102(b)(1)(F), (G)) does not limit the manufacturer's reporting obligation. As indicated in the NPRM, the agency is using this information to better understand the origin of defective and noncompliant components, so we can appropriately focus enforcement efforts.

Both the Motor & Equipment Manufacturers Association (MEMA) and the Alliance commented that they did not have objections to the country of origin requirement. Both trade associations, however, commented they were concerned that manufacturers may not be able to meet the short timeframe for submitting that information. The NPRM proposed adding the country of origin requirement to subsection 573.6(c)(2)(iv) since, at present, that subsection requires manufacturers to supply the name and address of the component's manufacturer where the recall concerns a defective or noncompliant component produced by another manufacturer. Subsection (c)(2), however, requires information to be provided when a defect or noncompliance report is first filed. *See* 49 CFR 573.6(b). Defect and noncompliance reports must be filed within five (5) working days after a manufacturer a defect or noncompliance determination. *Id.*

MEMA suggested that the requirement be revised to indicate that country of origin information must be provided ''if available'' at the time the initial report is filed. It further suggested that if the information is not available at the time of first filing, manufacturers should be allowed to provide that information in a supplemental 573 report. *Id.*

The Alliance asked that manufacturers have the option to indicate the country of origin is unknown when the 573 report is filed. It noted that this is similar to a clause in 573.6(c)(2)(iv) permitting manufacturers that do not know the identity of the manufacturer of a recalled component to identify the vendor of the component instead. However, the Alliance's proposal would not require manufacturers to ultimately identify the country of origin.

We are modifying the proposal such that manufacturers do not need to submit the country of origin in their initial Part 573 Reports, but must supplement their Part 573 Reports once they obtain country of origin information. Manufacturers may need more than five (5) working days to ascertain the country of origin of a component. Nonetheless, manufacturers need to undertake all reasonable efforts to obtain this information and provide it to the agency in an expeditious manner. We are rejecting the Alliance's suggested change to permit a manufacturer to indicate a lack of knowledge because we believe country of origin information to be important at identifying and getting to the source of the problem. We do not believe allowing manufacturers to simply indicate their lack of knowledge regarding country of origin—without any expectation that they do anything further—will be useful.

Accordingly, we are amending 49 CFR 573.6(c)(2)(iv) to require reporting manufacturers to identify a recalled component's country of origin (i.e., final place of manufacture or assembly), and the manufacturer and/or assembler of the component by name, business address, and business telephone number. If the reporting manufacturer does not know the country of origin of the component, it must provide that information once it becomes available.

V. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov*.

VI. Rulemaking Analyses and Notices

A. Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines as ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impacts of the rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking is not considered significant. Therefore, this document was not reviewed under Executive Order 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Today's EWR amendments affect 314 manufacturers (32 light vehicle manufacturers, 219 trailer manufacturers, 11 motorcycle manufacturers, 37 medium-heavy vehicle manufacturers and 15 bus manufacturers). The rule would relieve reporting burdens currently imposed on some light vehicle, medium-heavy vehicle, motorcycle and trailer manufacturers and impose modest new burdens on the bus manufacturers. In order to determine if any of these manufacturers are small entities under the RFA, NHTSA reviewed the North American Industry Classification System (NAICS) codes. Under those criteria, manufacturers of light vehicles, medium and heavy trucks, buses, or motor vehicle bodies are classified as a small business if they have fewer than 1,000 employees. For trailer and motorcycle manufacturers, the company must have fewer than 500 employees to be considered a small business. All employees from the parent company and its subsidiaries are considered when determining the number of employees.

Based on our application of these criteria (for details of our analysis, see our Final Regulatory Evaluation in the docket of this rulemaking), NHTSA has concluded that the majority of the light vehicle manufacturers and almost all of the 219 trailer manufacturers that would be relieved of quarterly reports by this rule (except for instances of fatalities) are small businesses. In addition, we believe that the majority of the 11 motorcycle and 37 medium-heavy vehicle manufacturers are small businesses.

For the bus category, 20 bus manufacturers currently submit quarterly EWR reports to NHTSA. We estimate that an additional 15 bus manufacturers will be required to submit quarterly EWR reports under today's final rule. Based on our review of publicly available information, we estimate that 10 of those 15 bus manufacturers are small businesses having fewer than 1,000 employees. In our view, 10 small businesses out of a total of 15 entities (66.7 percent) constitute a substantial number.

To determine whether the final rule would have a significant economic impact on the small bus companies, we look at our estimated cost of the proposal (an annual reporting cost of $16,256 per average company and a one time start-up cost of $3,500 per company) and compare that to the revenues of the company (which would include the parent company and its subsidiaries). The smallest bus company that is not a subsidiary of a larger company appears to be Ebus, Inc., with 45 employees. Ebus, Inc. reportedly has sales revenues of approximately $600,000. The cost of this rulemaking per company divided by Ebus, Inc. revenue is approximately 2.7 percent, which the agency does not consider to be a significant economic impact.

For the light vehicle, medium-heavy vehicle, motorcycle and trailer manufacturers affected by this final rule, we estimate a cost savings. Even though we do not have revenue estimates for these manufacturers, these cost savings are not economically significant.

The defect and noncompliance amendments to Part 573 are also not anticipated to have a significant economic impact on a substantial number of small businesses. The changes to the tire reporting requirements of the tire identification number affect tire manufacturers. We are unaware of any tire manufacturers that are considered small businesses. Even if there were small tire manufacturers, the cost per recall of reporting the range of TINs of $1,126 would not have a significant economic impact on them. The country of origin requirements potentially affect small businesses, however, the annual economic impact to determine the country of origin of its product in question is small and the impact on any one business is also small. Of the average 650 motor vehicle safety recalls per year, we estimate that the company will need to investigate the country of origin of its products in 10 percent of the recalls. Out of the 65 recalls affected per year, only a few would be conducted by small businesses, and at an estimated cost of $590 each, the economic impact is not significant.

In sum, while today's EWR amendments affect a substantial number of small businesses (potentially 32 light vehicle manufacturers, 37 medium/heavy vehicle manufacturers, 10 bus manufacturers, 219 trailer manufacturers and 11 motorcycle manufacturers), the agency believes that the final rule will not have a significant economic impact on those entities. In addition, the amendments to Part 573 will not have a significant economic impact on a substantial number of small businesses. Accordingly, I certify that this final rule would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of ''regulatory policies that have federalism implications.'' The Executive Order defines this phrase to include regulations ''that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The changes adopted in this document only affect a rule that regulates the manufacturers of motor vehicles and motor vehicle equipment, which does not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2007 results in $130 million (119.682 ÷ 92.106 = 1.30). This final rule would not result in expenditures by State, local or tribal governments of more than $130 million annually. The final rule would result in an annual savings of approximately $4.45 million. The Final Rule promulgating the EWR regulation did not have unfunded mandates implications. 67 FR 49263 (July 30, 2002).

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform'' [18] the agency has considered whether this proposed rule would have any retroactive effect. We conclude that it would not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. The collection of information associated with Part 579 is titled ''Reporting of Information and Documents About Potential Defects'' and has been assigned OMB Control Number 2127–0616. At present, OMB is reviewing NHTSA's request for an extension of approval to collect this information. Based on Part 579 as presently written, NHTSA has estimated that the collection of information will result in 2,355 responses, with a total of 82,391 burden hours on affected manufacturers.

Today's final rule will reduce the reporting burden on manufacturers associated with Part 579. NHTSA believes that the changes adopted by today's final rule will result in a reduction of 34,570 burden hours on those reporting. The reduction in burden hours was calculated by separating the type of reports that manufacturers are required to submit under EWR into two groups, A and B. Regardless of industry type, Group A reports include reports that all manufacturers are required to submit under EWR, if they meet the specific industry reporting threshold. Group B reports are reports that not all manufacturers are required to submit even if they meet the specific industry threshold. Our calculation follows:

[18] *See* 61 FR 4729 (February 7, 1996).

Group A Reports

[In hours]

	At present (hours)	NPRM (hours)	Change (hours)
Claims and notices of injury/fatality	508.9	507.98	−0.92
Property damage	1200.6	1195.1	−5.5
Field reports	12,691.5	12,637.83	−53.67
Foreign Death claims	18	17.75	0.25
Total change			−60

Bus Manufacturers—NHTSA estimates that bus manufacturers will file one additional claim and notice of injury/fatality reports a year, which will require 5 minutes to process. The agency estimates there will be no additional reports on property damage. Furthermore, an estimated 8 additional manufacturer field reports will be filed, for a total of 40 minutes. We estimate there will be no additional foreign death claim reports. NHTSA estimates there will be an additional 9 reports or 0.75 burden hours on bus manufacturers.

In sum, for Group A reports, NHTSA estimates that today's final rule results in a total reduction of 59.25 burden hours a year (0.75 additional burden hours minus 60 hours of reduced burden on manufacturers).

Group B Reports

Group B reports consist of warranty claims, consumer complaints, and dealer field reports. Under the final rule, the number of manufacturers reporting on light vehicles will be reduced from 62 to 30 (a reduction of 32 manufacturers), which results in 678.9 less burden hours. The number of bus manufacturers reporting will increase from 20 to 35 (an addition of 15 manufacturers), which results in an increase of 198.9 burden hours. The number of trailer manufacturers will decrease from 280 to 61 (a reduction of 219 trailer manufacturers), which results in 580.8 fewer burden hours. The number of motorcycle manufacturers will decrease from 23 to 12 (a reduction of 11 motorcycle manufacturers), which results in 58.4 fewer burden hours. In addition, the number of medium/heavy vehicle manufacturers will be reduced from 66 to 29 (a reduction of 37 manufacturers), which results in 490.7 fewer burden hours.

Thus, NHTSA estimates there will be a reduction of 1,609 burden hours on vehicle manufacturers for Group B reports.

Computer Maintenance Burden Hours

In addition to processing time, several industry types will see a reduction in their computer maintenance burden. As a result of the amendments adopted in today's final rule, 30 fewer light vehicle manufacturers will report quarterly EWR reports, which results in 11,104 fewer computer maintenance burden hours (32 × 347 burden hours per manufacturer). In addition, there will be 37 fewer medium/heavy vehicle manufacturers reporting, resulting in 3,200.5 fewer computer maintenance burden hours (37 × 86.5 burden hours per manufacturers). Further reductions will be seen in the motorcycle industry. There will be 11 fewer motorcycle manufacturers reporting, resulting in 951.5 fewer computer maintenance burden hours (11 × 86.5 burden hours per manufacturer). Also, there will be 219 fewer trailer manufacturers reporting, which results in 18,943.5 fewer computer maintenance burden hours (219 × 86.5 burden hours per manufacturer). There will be 15 more bus manufacturers submitting quarterly EWR reports, or 15 × 86.52 burden hours per manufacturer, for a total increase of +1,297.8 more burden hours on bus manufacturers. Thus, under today's final rule, there will be an overall reduction of 32,902 burden hours on industry resulting from computer maintenance.

TOTAL BURDEN HOURS ON INDUSTRY FOR EWR AMENDMENTS IN THE FINAL RULE

	Burden hours
Group A Reports	−59
Group B Reports	−1,609
Computer Maintenance Reports	−32,902
Total	−34,570

Based on the foregoing, NHTSA believes industry will incur 34,570 fewer burden hours a year in EWR reporting to NHTSA.

Part 573's information collection is assigned OMB Control Number 2127–0004, and was recently approved on October 9, 2008. At the time of approval, NHTSA estimated the requirements of Part 573 necessitate 21,370 burden hours per year.

The revisions to Part 573 as a result of this final rule do not change the scope of those manufacturers' obligation to notify NHTSA of a defect or noncompliance. Also, the new requirement to provide a TIN range for tire recalls does not affect the burden hours associated with Part 573's information collection.[19]

The new component country of origin requirement added to Part 573, however, may potentially have a slight impact on the burden hours associated with Part 573's information collection. Under the current information collection, we estimate that 650 recalls, on average, are processed a year. We estimate that possibly ten percent of the recalls processed each year will require the reporting manufacturer to obtain the country of origin. Accordingly, we calculate that the new component country of origin requirement may result in an additional 33 (rounded up from 32.5) burden hours (650 recalls × 10 percent ÷ 2).

In summary, this rulemaking reduces the burden on industry by over 34,000 burden hours.

G. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

[19] As noted in the preamble, many tire manufacturers provide the range of TINs for recalled tires in their Part 573 reports. The requirement of providing a TIN range for recalled tires will not increase the burden hours for the collection because, whether they reported it or not in the past, manufacturers must determine a TIN range in order to identify the recall population.

Today's final rule is not economically significant.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in or about April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. In the NPRM, we requested comment regarding our application of the principles of plain language in the proposal. We did not receive any comments on this issue.

J. Data Quality Act

Section 515 of the FY 2001 Treasury and General Government Appropriations Act (Pub. L. 106–554, section 515, codified at 44 U.S.C. 3516 historical and statutory note), commonly referred to as the Data Quality Act, directed OMB to establish government-wide standards in the form of guidelines designed to maximize the ''quality,'' ''objectivity,'' ''utility,'' and ''integrity'' of information that Federal agencies disseminate to the public. As noted in the EWR final rule (67 FR 45822), NHTSA has reviewed its data collection, generation, and dissemination processes in order to ensure that agency information meets the standards articulated in the OMB and DOT guidelines. The changes adopted by today's final rule would alleviate some of the burden for manufacturers to provide EWR reports by reducing the reporting requirement on light vehicle manufacturers and trailer manufacturers. Where the final rule is requiring additional reporting by manufacturers, the new requirement will serve to improve the quality of the data NHTSA receives under the EWR rule, enabling the agency to be more efficient and productive in proactively searching for potential safety concerns as mandated through the TREAD Act.

List of Subjects in 49 CFR Parts 573 and 579

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR parts 573 and 579 as set forth below:

PART 573—DEFECT AND NONCOMPLIANCE RESPONSIBILITY AND REPORTS

■ 1. The authority citation for part 573 continues to read as follows:

Authority: 49 U.S.C. 30102, 30103, 30116–30121, 30166; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

■ 2. Amend § 573.6 by revising paragraphs (c) (2) (iii) and (iv) to read as follows:

§ 573.6 Defect and noncompliance information report.

* * * * *

(c) * * *

(2) * * *

(iii) In the case of items of motor vehicle equipment, the identification shall be by the generic name of the component (tires, child seating systems, axles, *etc.*), part number (for tires, a range of tire identification numbers, as required by 49 CFR 574.5), size and function if applicable, the inclusive dates (month and year) of manufacture if available and any other information necessary to describe the items.

(iv) In the case of motor vehicles or items of motor vehicle equipment in which the component that contains the defect or noncompliance was manufactured by a different manufacturer from the reporting manufacturer, the reporting manufacturer shall identify the component and, if known, the component's country of origin (*i.e.* final place of manufacture or assembly), the manufacturer and/or assembler of the component by name, business address, and business telephone number. If the reporting manufacturer does not know the identity of the manufacturer of the component, it shall identify the entity from which it was obtained. If at the time of submission of the initial report, the reporting manufacturer does not know the country of origin of the component, the manufacturer shall ascertain the country of origin and submit a supplemental report with that information once it becomes available.

* * * * *

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

■ 3. The authority citation for part 579 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Subpart A—General

■ 4. Amend § 579.4 by revising the definition of ''Other safety campaign'' in paragraph (c) to read as follows:

§ 579.4 Terminology.

* * * * *

(c) * * *

* * * * *

Other safety campaign means an action in which a manufacturer communicates with owners and/or dealers in a foreign country with respect to conditions under which motor vehicles or equipment should be operated, repaired, or replaced that relate to safety (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale); or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment.

* * * * *

Subpart C—Reporting of Early Warning Information

■ 5. Amend § 579.21 by revising the section heading and by revising the first sentence of the introductory text to read as follows:

§ 579.21 Reporting requirements for manufacturers of 5,000 or more light vehicles annually.

For each reporting period, a manufacturer whose aggregate number of light vehicles manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during each of the prior two calendar years is 5,000 or more shall submit the information described in this section. * * *

* * * * *

■ 6. Amend § 579.22 by
■ a. Revising the section heading;
■ b. Revising the introductory text; and
■ c. Revising the introductory text to paragraph (b) to read as follows:

§ 579.22 Reporting requirements for manufacturers of 100 or more buses, manufacturers of 500 or more emergency vehicles and manufacturers of 5,000 or more medium-heavy vehicles (other than buses and emergency vehicles) annually.

For each reporting period, a manufacturer whose aggregate number of buses manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce,

or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 100 or more shall submit the information described in this section. For each reporting period, a manufacturer whose aggregate number of emergency vehicles (ambulances and fire trucks) manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 500 or more shall submit the information described in this section. For each reporting period, a manufacturer whose aggregate number of medium-heavy vehicles (a sum that does not include buses or emergency vehicles) manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 5,000 or more shall submit the information described in this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information separately with respect to each make, model, and model year of bus, emergency vehicle and/or medium-heavy vehicle manufactured during the reporting period and the nine model years prior to the earliest model year in the reporting period, including models no longer in production.

* * * * *

(b) *Information on incidents involving death or injury.* For all buses, emergency vehicles and medium heavy vehicles manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period:

* * * * *

■ 7. Amend § 579.23 by revising the section heading and by revising the first sentence of the introductory text to read as follows:

§ 579.23 Reporting requirements for manufacturers of 5,000 or more motorcycles annually.

For each reporting period, a manufacturer whose aggregate number of motorcycles manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 5,000 or more shall submit the information described in this section. * * *

* * * * *

■ 8. Amend § 579.24 by revising the section heading and by revising the first sentence of the introductory text to read as follows:

§ 579.24 Reporting requirements for manufacturers of 5,000 or more trailers annually.

For each reporting period, a manufacturer whose aggregate number of trailers manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 5,000 or more shall submit the information described in this section. * * *

* * * * *

■ 9. Amend § 579.27 by revising the section heading to read as follows:

§ 579.27 Reporting requirements for manufacturers of fewer than 100 buses annually, for manufacturers of fewer than 500 emergency vehicles annually, for manufacturers of fewer than 5,000 light vehicles, medium-heavy vehicles (other than buses and emergency vehicles), motorcycles or trailers annually, for manufacturers of original equipment, and for manufacturers of replacement equipment other than child restraint systems and tires.

* * * * *

■ 10. Amend § 579.29 by adding paragraph (a)(3) to read as follows:

§ 579.29 Manner of reporting.

(a) * * *

(3) For each report required under paragraphs (a) through (c) of §§ 579.21 through 579.26 of this part and submitted in the manner provided in paragraph (a)(1) of this section, a manufacturer must state the make, model and model year of each motor vehicle or item of motor vehicle equipment in terms that are identical to the statement of the make, model, model year of each motor vehicle or item of motor vehicle equipment provided in the manufacturer's previous report.

* * * * *

Issued on: September 11, 2009.

Ronald L. Medford,

Acting Deputy Administrator.

[FR Doc. E9–22365 Filed 9–16–09; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 74, No. 179
Thursday, September 17, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0747; Directorate Identifier 2009–NE–28–AD]

RIN 2120–AA64

Airworthiness Directives; Thielert Aircraft Engines GmbH (TAE) Model TAE 125–01 Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

An in-flight engine shutdown incident was reported on an aircraft equipped with a TAE 125–01 engine. This was found to be mainly the result of a blockage of the scavenge oil gear pump due to a broken axial bearing of the turbocharger. The broken parts were sucked into the oil pump and caused seizure. With the pump inoperative, the separator overfilled, causing the engine oil to escape via the breather vent line. This caused a loss of oil that resulted in the engine overheating and subsequent shutdown.

We are proposing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

DATES: We must receive comments on this proposed AD by October 19, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, *telephone:* +49–37204–696–0; *fax:* +49–37204–696–55; *e-mail: info@centurion-engines.com,* for the service information identified in this proposed AD.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: jason.yang@faa.gov*; telephone (781) 238–7747; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0747; Directorate Identifier 2009–NE–28–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0232, dated August 23, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

An in-flight engine shutdown incident was reported on an aircraft equipped with a TAE 125–01 engine. This was found to be mainly the result of a blockage of the scavenge oil gear pump due to a broken axial bearing of the turbocharger. The broken parts were sucked into the oil pump and caused seizure. With the pump inoperative, the separator overfilled, causing the engine oil to escape via the breather vent line. This caused a loss of oil that resulted in the engine overheating and subsequent shutdown.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Thielert has issued Service Bulletin No. TM TAE 125–0016, Revision 1, dated June 15, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

Differences Between This Proposed AD and the MCAI

We have reviewed the MCAI and, in general, agree with its substance. But we have found it necessary to change the compliance from ''within the next 50 flight hours after the effective date of this directive, but not later than 31 October 2007, whichever occurs first'', to ''within the next 50 flight hours after the effective date of this AD.''

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of Germany and is approved for operation in the United

States. Pursuant to our bilateral agreement with Germany, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require the modification of the engine oil system by installing a filter adaptor to the catch tank.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 250 products of U.S. registry. We also estimate that it would take about one work-hour per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $80 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $40,000.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Thielert Aircraft Engines GmbH: Docket No. FAA–2009–0747; Directorate Identifier 2009–NE–28–AD.

Comments Due Date

(a) We must receive comments by October 19, 2009.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Thielert Aircraft Engines GmbH (TAE) model TAE 125–01 reciprocating engines, all serial numbers (SN) up to-and-including SN 02–01–1018. These engines are installed in, but not limited to, Diamond Aircraft Industries Model DA42, Piper PA–28–61 (Supplemental Type Certificate (STC) No. SA03303AT), Cessna 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172R, 172S, F172F, F172G, F172H, F172K, F172L, F172M, F172N, and F172P (STC No. SA01303WI) airplanes.

Reason

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

An in-flight engine shutdown incident was reported on an aircraft equipped with a TAE 125–01 engine. This was found to be mainly the result of a blockage of the scavenge oil gear pump due to a broken axial bearing of the turbocharger. The broken parts were sucked into the oil pump and caused seizure. With the pump inoperative, the separator overfilled, causing the engine oil to escape via the breather vent line. This caused a loss of oil that resulted in the engine overheating and subsequent shutdown.

We are issuing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

Actions and Compliance

(e) Unless already done, do the following actions within the next 50 flight hours after the effective date of this AD:

(1) Modify the engine oil system by installing a filter adaptor to the catch tank.

(2) Use the installation instructions in Thielert Service Bulletin No. TM TAE 125–0016, Revision 1, dated June 15, 2007, to install the filter adaptor.

FAA AD Differences

(f) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) as follows:

(1) The MCAI compliance time states ''within the next 50 flight hours after the effective date of this directive, but not later than 31 October 2007, whichever occurs first''.

(2) This AD compliance time states ''within the next 50 flight hours after the effective date of this AD.''

Related Information

(g) Refer to European Aviation Safety Agency AD 2007–0232, dated August 23, 2007, for related information. Contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, *telephone:* +49–37204–696–0; *fax:* +49–37204–696–55; *e-mail: info@centurion-engines.com*, for a copy of this service information.

(h) Contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jason.yang@faa.gov*; telephone (781) 238–7747; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on September 10, 2009.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–22313 Filed 9–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0753; Directorate Identifier 2009–NE–31–AD]

RIN 2120–AA64

Airworthiness Directives; Thielert Aircraft Engines GmbH (TAE) Model TAE 125–01 Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

In-flight engine shutdown incidents were reported on aircraft equipped with TAE–125–01 engines. This was found to be mainly the result of operation over a long time period with broken piston cooling oil nozzles which caused thermal overload of the piston.

We are proposing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

DATES: We must receive comments on this proposed AD by October 19, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

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Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jason.yang@faa.gov*; telephone (781) 238–7747; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0753; Directorate Identifier 2009–NE–31–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0232, dated August 23, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

In-flight engine shutdown incidents were reported on aircraft equipped with TAE–125–01 engines. This was found to be mainly the result of operation over a long time period with broken piston cooling oil nozzles which caused thermal overload of the piston.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Thielert has issued Service Bulletin No. TM TAE 125–0017, Revision 2, dated February 22, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of Germany and is approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 250 engines of U.S. registry. We also estimate that it would take about 2 work-hours per engine to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $30 per engine. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $47,500.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Thielert Aircraft Engines GmbH: Docket No. FAA–2009–0753; Directorate Identifier 2009–NE–31–AD.

Comments Due Date

(a) We must receive comments by October 19, 2009.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Thielert Aircraft Engines GmbH (TAE) model TAE 125–01 reciprocating engines, excluding engines that have been modified to TAE Design Modification No. 2007–001. These engines are installed in, but not limited to, Diamond Aircraft Industries Model DA42, Piper PA–28–61 (Supplemental Type Certificate (STC) No. SA03303AT), Cessna 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172R, 172S, F172F, F172G, F172H, F172K, F172L, F172M, F172N, and F172P (STC No. SA01303WI) airplanes.

Reason

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

In-flight engine shutdown incidents were reported on aircraft equipped with TAE–125–01 engines. This was found to be mainly the result of operation over a long time period with broken piston cooling oil nozzles which caused thermal overload of the piston.

We are issuing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

Actions and Compliance

(e) Unless already done, do the following actions:

(1) Within the next 110 flight hours, or during the next scheduled maintenance, whichever occurs first after the effective date of this AD, inspect the engine and engine oil for any evidence or pieces of broken piston cooling nozzles.

(2) Use the inspection instructions in Thielert Service Bulletin No. TM TAE 125–0017, Revision 2, dated February 22, 2008, to perform the inspection.

(3) Thereafter, repetitively inspect the engine and engine oil for any evidence or pieces of broken piston cooling nozzles, within every additional 100 flight hours.

(4) If any evidence of a failed cooling nozzle is found, remove the engine from service before further flight.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) Refer to European Aviation Safety Agency AD 2008–0016 R1, dated February 22, 2008, and Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, telephone: +49–37204–696–0; fax: +49–37204–696–55; e-mail: *info@centurion-engines.com*, for related information.

(h) Contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jason.yang@faa.gov*; telephone (781) 238–7747; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on September 10, 2009.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–22314 Filed 9–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 772

[FHWA Docket No. FHWA–2008–0114]

RIN 2125–AF26

Procedures for Abatement of Highway Traffic Noise and Construction Noise

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This document proposes to revise the Federal regulations on the Procedures for Abatement of Highway Traffic Noise and Construction Noise. The FHWA seeks to clarify certain definitions, the applicability of this regulation, certain analysis requirements, and the use of Federal funds for noise abatement measures. In addition, the proposed regulation would include a screening tool and the latest state of the practice on addressing highway traffic noise.

DATES: Comments must be received by November 16, 2009.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 1200 New Jersey Avenue, SE., Washington, DC 20590 or fax comments to (202) 493–2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov*. All comments must include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: Mr. Mark Ferroni, Office of Natural and Human Environment, (202) 366–3233, or Mr. Robert Black, Office of the Chief Counsel, (202) 366–1359, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the

Government Printing Office's Web page at: *http://www.access.gpo.gov/nara*.

Background

The FHWA developed the noise regulation as required by section 136 of the Federal-Aid Highway Act of 1970 (codified at 23 U.S.C. 109(i)). The regulation applies to highway construction projects where a State department of transportation has requested Federal funding for participation in the project. The FHWA noise regulation, found at 23 CFR 772, requires a highway agency to investigate traffic noise impacts in areas adjacent to federally-funded highways for the proposed construction of a highway on a new location or the reconstruction of an existing highway that either significantly changes the horizontal or vertical alignment or increases the number of through-traffic lanes. If the highway agency identifies impacts, it must consider abatement. The highway agency must incorporate all feasible and reasonable noise abatement into the project design.

The FHWA published the ''Highway Traffic Noise Analysis and Abatement Policy and Guidance'' (''Policy and Guidance''), dated June 1995, (available at *http://www.fhwa.dot.gov/environment/noise/polguide/polguid.pdf*) which provides guidance and policy on highway traffic and construction noise abatement procedures for Federal-aid projects. While updating the 1995 Policy and Guidance, the FHWA determined that certain changes to the noise regulations were necessary. As a result, the FHWA developed this NPRM to propose those changes.

This NPRM proposes to amend all of the sections in Part 772, except for sections 772.1 and 772.3. A highway agency would be required to submit its revised noise policy, meeting the requirements of the final rule, to FHWA for approval within 6 months of the publication date of the final rule. The FHWA would review the highway agency's revised noise policy for conformance to the final rule and uniform and consistent application nationwide. The highway agency would provide FHWA for approval a review schedule that does not to exceed 3 months from the highway agency's submission of the revised noise policy. FHWA would require at least 14 business days to conduct an initial and a subsequent review of a revised noise policy. Failure to submit a revised noise policy in accordance with the final rule could result in a delay in FHWA's approval of Federal-aid highway projects. The highway agency would be required to implement the new standard on the date that the FHWA approved the highway agency's revised policy. For Federal-aid highway projects for which the noise analysis has already begun, the FHWA Division Office would determine which of those projects, if any, should be completed under their previous approved noise policy. Commenters are encouraged to comment on the feasibility of this timeline. This NPRM also recommends changes to Table 1—Noise Abatement Criteria and the removal of Appendix A—National Reference Energy Mean Emission Levels as a Function of Speed. In addition to these proposed changes, the FHWA is proposing various minor changes to sections throughout the NPRM to institute a more logical order in the regulation. These proposed minor changes would not change the meaning of the regulation and would not be substantive in nature.

Although the FHWA is soliciting comments on all the proposed changes within the NPRM, there are three additions to the regulation for which the FHWA specifically seeks comment. The first, contained in section 772.9(c)(5)(ii)(b), allows highway agencies to determine the allowable cost of noise abatement. The second, contained in section 772.9(d), provides a change from past FHWA guidance regarding when it is appropriate for third parties to contribute additional funds to a noise abatement measure or aesthetic treatments. This NPRM would allow third party contributions only after the highway agency has determined that the noise abatement measure is feasible and reasonable. The third, contained in section 772.13(e), would require each highway agency to maintain an inventory of all constructed noise abatement measures, which FHWA currently requests from highway agencies during the triennial noise barrier inventory. Additional information on the proposed changes follows.

Proposed Changes

The FHWA proposes updates to section 772.5 Definitions, section 772.7 Applicability, section 772.9 Analysis of traffic noise impacts and abatement measures, section 772.11 Noise abatement, section 772.13 Federal participation, section 772.15 Information for local officials, and section 772.17 Traffic noise prediction, Table 1—Noise Abatement Criteria; ministerial changes to section 772.19 Construction Noise; and, the removal of Appendix A—National Reference Energy Mean Emission Levels as a Function of Speed.

Section 772.5, as proposed, would add, modify, or combine definitions, as well as reorganize the order in which they appear in the regulation. Section 772.5(a), as proposed, would expand the definition of a Type I project as provided in the FHWA memorandum dated October 20, 1998 (available at *http://www.fhwa.dot.gov/environment/noise/type1mem.htm*) and in accordance with common industry practices. Section 772.5(a)(1), as proposed, would expand the definition of a highway on new location to include the addition of new interchanges or ramps to complete an existing partial interchange. Section 772.5(a)(2), as proposed, would require a highway agency to define the significant change in the horizontal or vertical alignment. Although these definitions, as proposed, would allow the highway agency to determine a significant change in the horizontal or vertical alignment, it would be required to consider, as a factor, a 3 dB(A) increase in the noise environment at the receptor when comparing the existing condition to the future build condition.

Section 772.5(a)(3), as proposed, would include the discussion of through-traffic lanes as provided in the FHWA memorandum dated October 20, 1998 (available at *http://www.fhwa.dot.gov/environment/noise/type1mem.htm*). This memorandum references High-Occupancy-Vehicle (HOV) lanes and truck-climbing lanes; however, we propose including High-Occupancy-Toll lanes as a Type I project.

Section 772.5(a)(4), as proposed, would include a discussion of auxiliary lanes. The October 20, 1998, memorandum (available at *http://www.fhwa.dot.gov/environment/noise/type1mem.htm*) also discusses when an auxiliary lane shall be determined a Type I project. This memorandum refers to an auxiliary lane increasing capacity, being a minimum of 1.5 miles long, added between interchanges to improve operational efficiency and functioning as a through-traffic lane. These four references corresponded to sections 772.5(a)(4)(i)–(iv), respectively. We would also, as proposed in section 772.5(a)(4)(v), classify an auxiliary lane as a Type I project if the auxiliary lane significantly alters the horizontal or vertical alignment. Section 772.5(b), as proposed, would clarify the definition of a Type II project. The first sentence will remain the same as currently written in the regulation. A second sentence would be added to clarify that in order for a highway agency to receive Federal-aid highway funds for a Type II project, the highway agency must

develop and implement a Type II program in accordance with section 772.7(c)(2). The development and implementation of a Type II program has been supported by the FHWA since June 1995 with the release of the Policy and Guidance document, which is available at *http://www.fhwa.dot.gov/environment/noise/polguide/polguid.pdf*).

Section 772.5(c), as proposed, would define a Type III project. This new project type is necessary to categorize projects that do not satisfy the definition of a Type I or a Type II project. For example, roadway reconstruction or in-kind bridge replacements do not meet the definitions of a Type I project or a Type II project. The lack of categorization for these projects would be problematic as highway agencies prepare environmental clearance documentation because there is no succinct way to discuss the noise analysis requirements of the project. This new Type III project category would enable highway agencies to categorize all projects.

Section 772.5(d), as proposed, would define the term ''residence.'' The term residence would appear throughout the regulation including Activity Category B within Table I of the Noise Abatement Criteria. According to the June 19, 1995, distribution memorandum (available at *http://www.fhwa.dot.gov/environment/noise/polpap_m.htm*) for the 1995 Policy and Guidance document, ''the method used to count residences should include all dwelling units, *e.g.,* owner-occupied, rental units, mobile homes * * *.'' The proposed definition would ensure proper application of the term when determining noise impacts. References to a benefited receiver would be found in proposed sections 772.5, 772.9 and Table 1 of this NPRM.

Section 772.5(e), as proposed, would add a definition for the term ''special land use facilities.'' This would include picnic areas, recreation areas, playgrounds, active sport areas, parks, motels, hotels, schools, places of worship, libraries, hospitals, cemeteries, campgrounds, trails, and trail crossings. Special land use facilities often require a different process to identify the number of impacted and benefited receivers it contains than that of a residence. In proposed section 772.9, we would define impact/impacted and benefited/benefiting receivers.

Section 772.5(f), as proposed, would define the term ''multifamily dwelling,'' and would require the State agency to count each residence in a multifamily structure as one receiver. The proposed definition would allow highway agencies to assess the total number of impacted and benefited receivers. Proposed section 772.9 of this NPRM would refer to multifamily dwellings.

In section 772.5(g), as proposed, would define the term ''planned, designed, and programmed'' as a definite commitment to develop land with an approved specific design of land use activities. The term is currently referenced in the regulation under existing section 772.9, but is not defined.

Section 772.5(h), as proposed, would define the term ''date of public knowledge.'' According to the 1995 Policy and Guidance document, highway agencies ''must identify when the public is officially notified of the adoption of the location of a proposed highway project.'' The date of public knowledge establishes when the Federal/State governments are no longer responsible for providing noise abatement for new development, which occurs adjacent to the proposed highway project. The 1995 Policy and Guidance document indicates that the date of public knowledge cannot precede the date of approval of a Categorical Exclusion (CE), Finding of No Significant Impact (FONSI), or Record of Decision (ROD). The addition of this definition allows for the connection of planned, designed, and programmed with the date of public knowledge within the regulation.

Section 772.5(j), as proposed, would modify the definition of ''traffic noise impacts'' to include minor editorial and clarification changes.

Section 772.5(k), as proposed, would modify the definition of ''design year.'' Highway agencies define the design year as a part of their project development. Under the proposed definition, the design year established for the Federal-aid highway project would be the year used for the noise analysis.

Section 772.5(l), as proposed, would define the term ''impacted receiver.'' There are references throughout the current regulation about determining traffic noise impacts. This definition would clarify that traffic noise impacts can occur two ways, either by approaching or exceeding an absolute noise level, called the Noise Abatement Criteria (NAC) or by a noise level substantially increasing over the existing sound level. Impacted receiver would be referenced in proposed sections 772.9 and 772.11 of this NPRM.

Section 772.5(m), as proposed, would define the term ''benefited receiver.'' A benefited receiver would not also have to be an impacted receiver. Benefited receiver would be referenced in proposed section 772.9 of this NPRM.

Section 772.5(n), as proposed, would define the term ''feasibility.'' The current regulation makes references to feasibility, and it is defined in the 1995 Policy and Guidance document; however, it is not defined in the current regulation. Proposed section 772.9 of this NPRM refers to feasibility.

Section 772.5(o), as proposed, would define the term ''reasonableness.'' Reasonableness would be determined by considering several factors. The current regulation makes references to reasonableness and it is defined in the 1995 Policy and Guidance document; however, it is not defined in the current regulation. Sections 772.9, 772.11 and 772.15 of this NPRM refer to reasonableness.

Section 772.5(p), as proposed, would define the term ''common noise environment'' and provide clarification to proposed section 772.9(e), concerning the concept of averaging the cost of noise abatement among benefited receivers within a common noise environment.

Section 772.5(q), as proposed, would define the term ''property owner,'' which is referred to proposed sections 772.9, and 772.11 of this NPRM.

Section 772.5(r), as proposed, would define the term ''substantial construction'' as the granting of a building permit, the filing of a plat plan, or the occurrence of a similar action prior to right-of-way acquisition or construction approval for the original highway.

Section 772.5(s), as proposed, would define the term ''severe noise impact.'' The regulation currently references severe noise impacts in section 772.13(d) but does not define the term. Severe noise impacts would be referenced in proposed section 772.13 of this NPRM.

Section 772.5(t), as proposed, would combine the definitions of ''L10'' and ''L10(h)'' into one definition of L10, since it is unnecessary to have two definitions for L10. L10(h) would be referenced in proposed Table I of this NPRM.

Section 772.5(u), as proposed, would combine the definitions of ''Leq'' and ''Leq(h)'' into one definition of Leq since it is unnecessary to have two definitions for Leq. Leq(h) would be referenced in proposed Table I of this NPRM.

Section 772.7(a), as proposed, would make this regulation applicable to all Federal lands and Federal-aid projects authorized under Title 23.

Section 772.7(b), as proposed, would emphasize that this regulation would be applied uniformly and consistently statewide. The principles of applying

this regulation uniformly and consistently have been common practice, as supported by the 1995 Policy and Guidance document.

Section 772.7(c), as proposed, would combine sections 772.7(a) and 772.7(b) in the current regulation and would include recommendations on a Type II program and Type III projects. The current section applies to all Type I projects unless the regulation specifically indicates that a section applies only to a Type II project. This section would refer to Type III projects as a new project category.

The language in current section 772.7(b) would now be found, in part, in proposed section 772.7(c)(1). We propose to remove the reference to when a Type II project is proposed for Federal-aid highway participation at the option of the highway agency (the proposed provisions of sections 772.9(c), 772.13, and 772.19) because it is redundant. Section 772.7(c), as proposed, would state that there are specific sections of the regulation that only apply to a Type II project.

Section 772.7(c)(2), as proposed, would require highway agencies choosing to participate in a Type II program to develop a priority system, based on a variety of factors, and rank the projects. The FHWA then must approve a highway agency's priority system before Federal-aid funds can be used. The parameters for the development of a priority system for a State highway agency's Type II program are currently contained in the 1995 Policy and Guidance document and help ensure equitable application of this optional program across social, economical and environmental factors.

With the addition of a Type III project in proposed section 772.7(c)(3), a highway agency would not be required to complete a noise analysis or consider abatement measures for Type III projects. Section 772.9(b)(2), as proposed, would require a highway agency to complete a traffic noise analysis of each Activity Category listed in Table 1 that is present in the project study area. The current regulation does not provide this direct link between the noise analysis and Table 1. Additional clarification and connection to the NAC listed in Table 1, as proposed, would be provided in proposed sections 772.9(b)(2)(i)–(v).

Section 772.9(b)(2)(i), would require highway agencies to submit justification to the FHWA on a case-by-case basis for approval of an Activity Category A designation. Activity Category A designations are extremely rare due to the difficulty in meeting these requirements; therefore, approval by the FHWA would be required to ensure the property meets the requirements and that the designation would be uniformly and consistently applied.

Section 772.9(b)(2)(ii), as proposed, would divide Activity Category B into residences, both single-family and multifamily, and special land use facilities. The definition of a special land use facility would be found in proposed section 772.5(e) of this NPRM. Highway agencies would be required to adopt a standard practice for analyzing these special land use facilities, which would allow the highway agency to uniformly and consistently apply the regulation when a project area contained a special land use facility. A highway agency could categorize the standard practice for special land use facilities by context and intensity, i.e., land use type, usage, project level, etc. Section 772.9(b)(2)(iii), as proposed, would restate Activity Category C, which Table 1 lists as ''Developed lands, properties, or activities not included in Categories A or B above.'' It is the FHWA's position that this is comprised of both commercial and industrial land uses. These land uses are the only developed land use types not already listed in Categories A or B.

Section 772.9(b)(2)(iv)(A), as proposed, would require a highway agency to determine if undeveloped land is planned, designed, and programmed for development. Planned, designed, and programmed is listed in the current regulation in section 772.9(b)(1), and would be defined in proposed section 772.5(g). The 1995 Policy and Guidance document provided guidance on the exact date that undeveloped land could be determined planned, designed, and programmed. This section, as proposed, would require the highway agency to identify the milestones or activities and associated dates for acknowledging when undeveloped land is considered planned, designed, and programmed, choose the milestone or activity that best fulfills its requirements and apply them consistently and uniformly statewide.

Section 772.9(b)(2)(iv)(B), as proposed, would require a highway agency to determine future noise levels when undeveloped land is planned, designed, and programmed and, where appropriate, to consider abatement measures. This would clarify current section 772.9(b)(1), which requires a highway agency to complete a noise analysis for undeveloped lands for which development is planned, designed, and programmed.

Section 772.9(b)(2)(iv)(C), as proposed, would recommend methods to assess noise levels for undeveloped lands that are not planned, designed, and programmed for development. If undeveloped land is not planned, designed, and programmed by the date of public knowledge, the highway agency would be required to determine noise levels and document the results in the project's environmental clearance documents and noise analysis documents. Lands that are not planned, designed, and programmed by the date of public knowledge would not be eligible for consideration for Federal participation for noise abatement measures. The date of public knowledge would be defined in proposed section 772.5(h) of this NRPM. The 1995 Policy and Guidance document states that the date of public knowledge is the date when the Federal government is no longer responsible for providing noise abatement for new development that occurs adjacent to the proposed highway project. The date of public knowledge could not precede the date of approval of CEs, FONSIs, or RODs.

Section 772.9(b)(2)(v), as proposed, would require a highway agency to only conduct an indoor analysis for Activity Category E, which proposed Table 1 lists as the interior of residences, motels, hotels, public meeting rooms, schools, places of worship, libraries, hospitals, and auditoriums, after completing an analysis of the outdoor activity areas. A highway agency would be required to exhaust all outdoor analysis options before performing an indoor analysis.

Section 772.9(b)(3), as proposed, would require, for a Type I project, the traffic noise analysis study area to extend at least 500 feet from the project of the build alternative(s) as the minimum area; however, highway agencies could choose to routinely analyze at distances greater than 500 feet. A highway agency would be required to analyze any area beyond the minimum distance if the highway agency believed that traffic noise impacts could occur. These minimum areas for analyzing traffic noise impacts would ensure that the highway agency identified all potentially impacted receivers. If impacts were determined beyond the minimum area of analysis, a highway agency would be required to include those impacts in the consideration of feasible and reasonable noise abatement measures.

Section 772.9(c)(3)(i), as proposed, would require highway agencies to establish an ''approach'' level for determining a traffic noise impact as at least 1 dB(A) less than the NAC. This is consistent with the 1995 Policy and Guidance document.

Section 772.9(c)(3)(ii), as proposed, would require highway agencies to define the term ''substantial noise increase.'' The 1995 Policy and Guidance document makes reference to a 10 dB(A) and a 15 dB(A) substantial increase criteria but then indicates that the FHWA will ''accept a well-reasoned definition that is uniformly and consistently applied.'' Since 1995, it has become common practice for a highway agency to define a substantial increase as a design year noise increase over existing noise levels of between 10 dB(A) to 15 dB(A). Therefore, the FHWA is proposing to require a State highway agency to define a substantial noise increase criterion between 10 dB(A) to 15 dB(A). The second sentence in section 772.9(c)(3)(ii), as proposed, is consistent with the 1995 Policy and Guidance document, which states, ''A traffic noise impact occurs when the predicted levels approach or exceed the NAC or when predicted traffic noise levels substantially exceed the existing noise level, even though the predicted levels may not exceed the NAC.'' Therefore, we propose no lower dB(A) limit when considering a substantial noise increase.

Section 772.9(c)(4), as proposed, would require a traffic noise analysis to include an assessment of impacted and benefited receivers, which are defined in these proposed sections 772.5(l) and 772.5(m), respectively. We also propose in this section that a ''highway agency shall define the threshold for the noise reduction which determines a benefited receiver as at least 5 dB(A).'' It is the FHWA's position that, since it requires a 5 dB(A) noise reduction for a noise abatment measure to be deemed acoustically feasible, the same principle should be required for a receiver to be classified as benefiting from the noise abatement measure.

Section 772.9(c)(5), as proposed, would require a traffic noise analysis to include an examination and evaluation of feasible and reasonable noise abatement measures for reducing traffic noise impacts. The regulation would not specify what to include in determining that a noise abatement measure is feasible and/or reasonable; however, the 1995 Policy and Guidance document indicates that both feasibility and reasonableness should include several factors and provides several examples. As a result, we propose each highway agency develop feasibility and reasonableness factors for FHWA approval. The factors in proposed sections 772.9(c)(5)(i)–(ii) are the minimum factors a highway agency would be required to include in its feasibility and reasonableness factors.

Section 772.9(c)(5)(i)(A), as proposed, would require feasibility factors to include an ''achievement of at least a 5 dB(A) highway traffic noise reduction at the majority of the impacted receivers * * *.'' The 5 dB(A) reduction in noise is supported by the 1995 Policy and Guidance document, and ''majority'' would be required to mean at least one percentage point over 50 percent.

Section 772.9(c)(5)(i)(B), as proposed, would require that, for a noise abatement measure to be feasible, a highway agency must determine that ''it is possible to design and construct a safe noise abatement measure.'' This requirement would reiterate safety as a key concern of both the FHWA and State highway agencies.

Section 772.9(c)(5)(ii)(A), as proposed, would require that reasonableness include ''consideration of the desires of the property owners of the impacted receivers.'' Section 772.11(f), as proposed, describes how that would be determined.

Section 772.9(c)(5)(ii)(B), as proposed, would deviate from current practice provided in the 1995 Policy and Guidance document. Highway agencies currently determine a cost per square foot of their noise abatement measures based on their own criteria and then choose from a range of $15,000 to $50,000 per benefited receiver, as allowed by the 1995 Policy and Guidance document. The highway agency then multiplies the square footage of the noise abatement measure by the cost per square foot to get the total cost of the noise abatement measure. Once the total cost of the noise abatement measure is determined, the highway agency divides this total cost by the number of benefited receivers. Instead of dividing by a cost/benefited receiver, some highway agencies divide by a cost/benefited receiver/dB(A). In this section, we propose to allow each highway agency to determine, with FHWA approval, the allowable cost of abatement by determining a baseline cost reasonableness value. This determination could include the actual construction cost of noise abatement, cost per square foot of abatement, and either the cost/benefited receiver or cost/benefited receiver/dB(A).

Section 772.9(c)(5)(ii)(B), as proposed, would require a highway agency to re-analyze the allowable cost for abatement at regular intervals, not to exceed 5 years. This would ensure that the cost of a noise abatement measure is reassessed for inflation of construction costs. Section 772.9(c)(5)(ii)(B), as proposed, would also give a highway agency the option of justifying, for FHWA approval, different cost allowances for a particular geographic area(s) within the State. This proposed change would provide flexibility to the highway agency when developing its allowable cost of abatement. If the highway agency develops different cost allowances for particular geographic areas, the highway agency would be required to consistently apply these methodologies as would be required by proposed section 772.7(b).

Section 772.9(c)(5)(iii), as proposed, would allow a highway agency to consider other reasonableness factors, including the date of development, length of exposure to highway traffic noise impacts, exposure to higher absolute highway traffic noise levels, changes between existing verses future build conditions, mixed zoning development, and implementation of noise compatible planning concepts. Only the reasonableness factors listed in proposed section 772.9(c)(5) would be allowed on Federal-aid highway projects.

Section 772.9(d), as proposed, would deviate from the 1995 Policy and Guidance document regarding third party funding for noise abatement. The 1995 Policy and Guidance document allows third party funding to pay for the difference between the actual cost of a noise abatement measure and the reasonable cost, as long as it is done in a nondiscriminatory manner. It is the FHWA's position that, in order to comply with the requirements of Title IV and the Executive Order on Environmental Justice (E.O. 12898), it is only acceptable to permit a third party funding on a Type I or Type II Federal-aid highway project if the noise abatement measure would be considered feasible and/or reasonable without the additional funding. The determination of feasibility and reasonableness to fund the construction of a noise abatement measure would be based solely on the highway agency's requirements for determining feasibility and reasonableness. However, it would be acceptable for a Federal-aid highway project, either Type I or Type II, to allow a third party to contribute funds to make functional (e.g., absorptive treatment, access doors) or aesthetic enhancements to a noise abatement measure already determined feasible and reasonable.

Section 772.9(e), as proposed, would allow a highway agency to average the cost of noise abatement measures among benefited receivers within a common noise environment for both Type I and Type II projects, and average the cost of noise abatement measures. Some highway agencies currently use cost-averaging practices. This proposed language would provide a parameter for

this practice to allow uniform and consistent application. This parameter would include ''within a common noise environment.'' A common noise environment would be defined in proposed section 772.5(p) of this NPRM.

Section 772.11(c), as proposed, would modify the current regulation by requiring a highway agency to consider abatement measures for an identified noise impact. The abatement measures listed in section 772.13(c) would be eligible for Federal funding and, at a minimum, the highway agency would be required to consider noise abatement in the form of a noise barrier. The noise abatement measures listed in section 772.13(c), as proposed, would be eligible for Federal-aid funding but a highway agency would not be required to consider each noise abatement measure listed in proposed section 772.13(c). The only noise abatement measure a highway agency would be required to consider would be a noise barrier.

Section 772.11(d), as proposed, would clarify the meaning of ''substantial noise reductions'' by adding ''which at a minimum, shall be at least 5 dB(A) for the majority of the impacted receivers.'' Impacted receivers would be defined in section 772.5(l), as proposed, and the definition of majority would be included in proposed section 772.9(c)(5)(i)(A).

Section 772.11(e), as proposed, would remove the phrase ''final environmental impact statement'' and add the full range of environmental documentation to include ''Categorical Exclusion, Finding of No Significant Impact and Record of Decision.'' Section 772.11(e)(1), as proposed, would switch the order of ''reasonable and feasible'' to ''feasible and reasonable.'' In the process of assessing a noise abatement measure, it is not logical to consider cost or views of the impacted receivers if the noise abatement measure has not been first assessed to determine if it is feasible, as defined in section 772.9(c)(5)(i), as proposed. Section 772.11(e)(2), as proposed, would remove ''no apparent solution'' and replace it with ''no noise abatement measures are feasible and reasonable.''

Section 772.11(f), as proposed, would clarify methods for soliciting the viewpoints of the benefited property owners by requiring a highway agency to solicit the viewpoints from all and receive responses from a majority of the benefited property owners. It is the FHWA's position that highway agencies should make good-faith efforts to solicit the viewpoints of all benefited property owners, since it relates to the reasonableness determination of noise abatement measures. Majority would mean at least one percentage point over 50 percent. This section also would require a highway agency to solicit only the viewpoints of the property owner(s) of a benefited receiver when determining reasonableness of a noise abatement measure. A highway agency would not consider the viewpoints of other entities to determine reasonableness unless explicitly authorized by the property owner(s). It is the position of FHWA that only the owners of the impacted property should have a deciding viewpoint on the reasonableness of a noise abatement measure, since owners have vested financial interests in the property.

Section 772.11(h), as proposed, would clarify the FHWA's position on noise analyses prepared for design-build projects. The stated goal of 23 CFR 636 is to ensure an objective National Environmental Policy Act (NEPA) process. The regulation is clear that final design cannot occur until NEPA is complete. The NEPA process includes the technical studies the NEPA decisionmakers rely on to develop the NEPA document and the NEPA decision document. This proposed provision would ensure an objective NEPA process by preventing the contractor from making NEPA decisions based solely on cost, which could potentially violate the conflict of interest requirements in 40 CFR 1506(c). The design-build regulation at 23 CFR 636.109(b) states that the design-build contract must include appropriate provisions ensuring that all environmental and mitigation measures identified in the NEPA document will be implemented and that the design-builder must not prepare the NEPA document or have any decision making responsibility with respect to the NEPA process. In order to comply with these provisions, a highway agency would be required to complete a technical noise analysis and abatement design as part of NEPA and the preliminary design. This is necessary to avoid a minimalist approach to noise abatement where the abatement measure is designed to the NAC or feasibility criterion, rather than to achieve a substantial reduction in accordance with the 1995 Policy and Guidance and to satisfy section 772.11(c), as proposed.

Section 772.13(a), as proposed, would clarify that the requirements of proposed sections 772.13(a)(1)–(2) would be required for both Type I and Type II projects. Section 772.13(a)(2), as proposed, would combine sections 772.13(a)(2)–(3) in the current regulation to state ''[a]batement measures have been determined to be feasible and reasonable per § 772.9(c)(5) of this chapter.'' By changing this sentence to include feasible and reasonable we would incorporate the intent in sections 772.13(a)(2)–(3).

Section 772.13(c), as proposed, would rename the subsection as ''Noise Abatement Measures'' to delineate clearly the purpose of the proposed section. Section 772.13(c), as proposed, lists the five noise abatement measures available for Federal-aid funding. The current regulation contains six noise abatement measures. We propose combining current sections 772.13(c)(3) and 772.13(c)(4), which deal with noise barriers as noise abatement measures. We propose to list noise barriers as the first noise abatement measure. Noise barriers currently are listed in sections 772.13(c)(3) and 772.13(c)(4), and we propose to list them in section 772.13(c)(1) solely because they are the most frequently used form of noise mitigation. The remaining noise abatement measures provided in the current regulation are listed in sequential order in this proposed section.

Section 772.13(c)(1), as proposed, would clarify the FHWA's position on Federal-aid funding for landscaping. This proposed language would replace section 772.13(c)(3) while retaining the intent of the current regulation. Section 772.13(c)(5), as proposed, would clarify that noise insulation of public use or nonprofit institutional structures would be eligible for Federal funding.

Section 772.13(d), as proposed, would require highway agencies to define severe noise impacts in accordance with proposed section 772.5(s). The proposed changes to this section would clarify the FHWA's position on the process required for a severe noise impact on a Federal-aid highway project. A noise analysis considers the worst-case noise environment for the design year of the Federal-aid highway project; therefore, it is the FHWA's position that the severe noise impact would be derived from the ''future build condition''; not the existing condition. We also propose that the highway agency first determine if the abatement measures listed in paragraph (c) of this section provide feasible and reasonable exterior noise abatement for severe noise impacts. If exterior noise abatement is not achievable, the highway agency may consider the following options; however, they shall be considered in sequence and submitted for FHWA approval, on a case-by-case basis. These options are listed in proposed sections 772.13(d)(1) and 772.13(d)(2), respectively. It is the FHWA's position to first allow highway agencies to

exceed their allowable cost of abatement. While the 1995 Policy and Guidance document does not mention exceeding the highway agency's allowable cost of abatement as an option, it is the FHWA's position that this is the first logical option to consider. If this were not a viable option due to excessive cost, then the highway agency would have the option of noise insulating a privately owned structure. Typically, noise insulating refers to providing additional wall insulation or replacement windows. The 1995 Policy and Guidance document refers to noise insulating privately owned structures as an abatement option for severe noise impacts. These proposed changes would maintain the intent of the current regulation on severe impacts, while providing clarification and flexibility to highway agencies seeking additional abatement options for severe impacts.

Section 772.13(e), as proposed, would be renamed ''Abatement Measure Reporting'' to delineate clearly that this section would require each highway agency to report all constructed noise abatement measures. The FHWA had requested the information proposed in this paragraph from highway agencies up to December 31, 2007, in the form of a noise barrier inventory. This information is helpful in providing a national inventory of noise barrier location, cost, materials and size. The information reported by highway agencies up to and including 2004 may currently be found at: *http://www.fhwa.dot.gov/environment/ab_noise.htm*.

Section 772.15(a)(i), as proposed, would require a highway agency to inform local officials of ''noise compatible planning concepts.'' The FHWA has supported the concepts surrounding noise compatible planning since the early 1970s, starting with the publication of ''The Audible Landscape: A Manual for Highway Noise and Land Use'' (*http://www.fhwa.dot.gov/environment/audible/index.htm*). Noise compatible planning encourages the location of less noise-sensitive land uses near highways, promotes the use of open space separating roads from developments, and suggests special construction techniques that minimize the impact of noise from highway traffic.

Section 772.15(a)(ii), as proposed, would clarify section 772.15(a) of the current regulation while retaining the intent of the current regulation, which is to provide estimates of future noise levels at various distances from the highway project. The proposed language would specify that the distance from the highway would be from the edge of the near travel lane to the point highway agency's ''approach'' criteria. This clarification would apply only within the project area.

Section 772.15(b), as proposed, would require a highway agency choosing to use the date of development as one of the factors in determining the reasonableness of a noise abatement measure to have a statewide outreach program to inform local officials and the public on the items in sections 772.15(a)(i)–(iv), as proposed. As discussed above, the FHWA has promoted noise compatible planning since the 1970s. Although land use control is a responsibility of local governments, it is the FHWA's position that, if a highway agency chooses to use the ''date of development'' as a reasonableness factor, it should be required to promote the concepts of noise compatible planning through an outreach program. This outreach program would allow all local jurisdictions and the public within the State the opportunity to be informed on the concepts of noise compatible planning, possibly giving way to these concepts being implemented and therefore avoiding, or at least lessening, the number of traffic noise impacts near highways.

Section 772.17(a), as proposed, would make two editorial changes. In May 2007, the FHWA moved to 1200 New Jersey Avenue, SE., Washington, DC 20590. Additionally, the Internet site www.trafficnoisemodel.org no longer exists. All information regarding the FHWA Traffic Noise Model (TNM) may be found at *http://www.fhwa.dot.gov/environment/noise/index.htm.*

Section 772.17(b), as proposed, would allow highway agencies the option to use the FHWA TNM Look-up Program (FHWA TNM Look-up) as a screening tool to determine the absence of potential noise impacts or if a more detailed analysis is needed with the FHWA TNM. The additional items that would be required to be adhered to are contained in proposed sections 772.17(b)(1)–(2).

Section 772.17(b)(1), as proposed, would prohibit a highway agency using the FHWA TNM Look-up, in addition to the limitations as indicated in Report No. FHWA–HEP–05–008, from using the FHWA TNM Look-up for roadways with more than 2 travel lanes, with total paved widths greater than 24 feet including shoulders and median, or containing intersections.

Section 772.17(b)(2), as proposed, would require that, if a highway agency chooses to use the FHWA TNM Look-up program, the results must be evaluated with at least a 5 dB(A) safety factor. This requirement would result from the FHWA TNM Look-up program's simple highway geometries and resulting limitations. Section 772.17(b)(2)(ii), as proposed, also recommends that, if the output from the FHWA TNM Look-up is greater than 5 dB(A) from the NAC and/or the comparison between the existing condition to future build conditions is less than the highway agency's definition of substantial noise increase, the highway agency should document the results indicating no impacts for the project. These requirements would ensure the proper assessment of traffic noise impacts.

Section 772.17(b)(3), as proposed, would prohibit a highway agency from using the FHWA TNM Look-up to determine feasible and reasonable noise abatement. It is not the intent of the FHWA TNM Look-up program to determine feasible and reasonable noise abatement, nor is it capable to assist in such a determination.

Section 772.17(c), as proposed, would include a new sentence that would permit a highway agency to use noise contour lines for land use planning but not to determine traffic noise impacts. Noise contours are appropriate to use as a tool to graphically educate local governments and the public about the existing and future noise conditions in a project area, but not to determine traffic noise impacts. Traffic noise impacts should be determined in accordance with proposed section 772.17(a).

In Table 1 of Part 772 –NAC, as proposed, the format and column headings as well as the ''Activity Description'' for both Activity Category B and E would be changed. The first column of Table 1, however, would remain unchanged. The proposed language would retain the second and third columns' existing titles, ''Leq(h)'' and L10(h)'', but incorporate them into a broader column heading entitled ''Activity Criteria.'' The proposed changes would also remove the ''(Exterior)'' and ''(Interior)'' clarifiers within the ''Leq(h)'' and L10(h)'' columns and add them to a new column labeled ''Evaluation Location.'' Further, proposed language would rename the heading of the last column as ''Activity Description.'' For Activity Category B and E, as proposed, ''churches'' would be ''places of worship,'' as not all religions worship in a ''church.'' Finally, Table 1, as proposed, would include ''cemeteries, campgrounds, trails, and trail crossings'' in Activity Category B. The inclusion of these activities is supported by a June 16, 1995, FHWA memo (*http://www.fhwa.dot.gov/environment/noise/*

cemetery.pdf) indicating these activities should be considered an Activity Category B land use. These activities should be assessed in the same manner as the other special land use facilities in the description of proposed section 772.5(e).

In Table 1, as proposed, a second footnote would be added. This footnote is associated with the ''Activity Criteria'' and would state that ''[t]he Leq(h) and L10(h) Activity Criteria values are for impact determination only, and are not design standards for noise abatement measures.'' This is supported by the 1995 Policy and Guidance document which states ''[t]raffic noise impacts can occur below the NAC. The NAC should not be viewed as Federal standards or desirable noise levels; they should not be used as design goals for noise barrier construction.''

In Appendix A to Part 772—National Reference Energy Mean Emission Levels as a Function of Speed, as proposed, would be removed. A previous NPRM on 23 CFR 772 (FHWA Docket No. FHWA–2004–018309) stated that the vehicle emission levels as graphically shown in Appendix A are no longer needed ''since this technology has now been well established and documented for more than two decades, the FHWA noise regulation no longer needs to include any reference to a measurement report or to vehicle emission levels. Therefore, the FHWA proposes to remove these references from the regulation.'' While this previous proposal was discussed in the ''Background'' section of the NPRM, FHWA's intent was to remove both the references to Appendix A as well as Appendix A. Therefore, we propose removing Appendix A.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined that this proposed rule would not be a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures.

The proposed amendments revise requirements for traffic noise prediction on Federal-aid highway projects to be consistent with the current state-of-the-art technology for traffic noise prediction. It is anticipated that the economic impact of this rulemaking would be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed rule on small entities and anticipates that this action would not have a significant economic impact on a substantial number of small entities. The proposed amendment addresses traffic noise prediction on certain State highway projects. As such, it affects only States, and States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the RFA does not apply, and the FHWA certifies that the proposed action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This NPRM would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The actions proposed in this NPRM would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $121.8 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the affects on State, local, and tribal governments and the private sector. Additionally, the definition of ''Federal Mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this proposed action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this proposed rule directly preempts any State law or regulation or affects the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

National Environmental Policy Act

The FHWA has analyzed this proposed action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and anticipates that this action would not have any effect on the quality of the human and natural environment, since it proposes to update the specific reference to acceptable highway traffic noise prediction methodology and remove unneeded references to a specific noise measurement report and vehicle noise emission levels.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FHWA determined that this NPRM would affect a currently approved information collection for OMB Control Number 2125–0622, titled ''Noise Barrier Inventory Request.'' OMB approved this information collection on July 30, 2008, at a total of 416 burden hours, with an expiration date of July 31, 2011.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that this proposed action would not have substantial direct effects on

one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. This proposed rulemaking primarily applies to noise prediction on State highway projects and would not impose any direct compliance requirements on Indian tribal governments nor would it have any economic or other impacts on the viability of Indian tribes. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use. We have determined that this proposed action would not be a significant energy action under that order because any action contemplated would not be likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, the FHWA certifies that a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action would not cause an environmental risk to health or safety that may disproportionately affect children.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 772

Highways and roads, Noise control.

Issued on: August 21, 2009.

Victor M. Mendez,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to revise part 772 of title 23, Code of Federal Regulations, as follows:

PART 772—PROCEDURES FOR ABATEMENT OF HIGHWAY TRAFFIC NOISE AND CONSTRUCTION NOISE

Sec.

Authority: 23 U.S.C. 109(h) and (i); 42 U.S.C. 4331, 4332; sec. 339(b), Pub. L. 104–59, 109 Stat. 568, 605; 49 CFR 1.48(b).

§ 772.1 Purpose.

To provide procedures for noise studies and noise abatement measures to help protect the public health and welfare, to supply noise abatement criteria, and to establish requirements for information to be given to local officials for use in the planning and design of highways approved pursuant to title 23 U.S.C.

§ 772.3 Noise Standards.

The highway traffic noise prediction requirements, noise analyses, noise abatement criteria, and requirements for informing local officials in this regulation constitute the noise standards mandated by 23 U.S.C. 109(1). All highway projects which are developed in conformance with this regulation shall be deemed to be in accordance with the FHWA noise standards.

§ 772.5 Definitions.

(a) Type I Project.

(1) The construction of a highway on new location, the addition of new interchanges or ramps added to a quadrant to complete an existing partial interchange;

(2) The physical alteration of an existing highway which significantly changes either the horizontal or vertical alignment. The physical alteration of an existing highway which the highway agency has determined significantly changes either the horizontal or vertical alignment. A factor for determining a significant change shall be a 3 dB(A) increase in the noise environment when comparing the existing condition to the future build condition;

(3) The addition of a through-traffic lane(s). This includes the addition of a through-traffic lane that functions as a HOV lane, High-Occupancy Toll (HOT) lane or truck climbing lane; or,

(4) The addition of an auxiliary lane, when the auxiliary lane:

(i) Increases capacity;

(ii) Is, at a minimum, 1.5 miles long;

(iii) Is added between interchanges to improve operational efficiency;

(iv) Functions as a through-traffic lane, regardless of length; or

(v) Significantly alters the horizontal or vertical alignment.

(b) Type II Project. A Federal or Federal-aid highway project for noise abatement on an existing highway. For a Type II project to be eligible for Federal-aid, the highway agency must develop and implement a Type II program in accordance with section 772.7(c)(2).

(c) Type III Project. A Federal or Federal-aid highway project that does not meet the classifications of a Type I or Type II project.

(d) Residence. A dwelling unit. Either a single family residence or each dwelling unit in a multifamily dwelling.

(e) Special Land Use Facilities. All land uses listed in Table 1, Noise Abatement Criteria (NAC), Activity Category B, except for residences shall be considered ''special use facilities'' due to the difficulty in determining the number of receivers.

(f) Multifamily Dwelling. A residential structure containing more than one residence. Each residence in a multifamily structure shall be counted as one receiver.

(g) Planned, Designed, and Programmed. A definite commitment to develop land with an approved specific design of land use activities.

(h) Date of Public Knowledge. The date of approval of the CE, the Finding of No Significant Impact FONSI, or the ROD.

(i) Existing noise levels. The noise resulting from the natural and mechanical sources and human activity usually present in a particular area.

(j) Traffic noise impacts. Highway traffic noise levels that approach or exceed the NAC listed in Table 1 for the future build condition; or future build condition noise levels that create a substantial noise increase over existing noise levels.

(k) Design year. The future year used to estimate the probable traffic volume for which a highway is designed.

(l) Impacted Receiver. The recipient of future build condition traffic noise levels that either approach or exceed the NAC or future build condition traffic noise level that substantially exceed the existing traffic noise levels.

(m) Benefited Receiver. The recipient of an abatement measure that provides at least a 5 d(B)A noise reduction for a receiver.

(n) Feasibility. The combination of acoustical and engineering factors of a noise abatement measure.

(o) Reasonableness. The combination of social, economic and environmental factors of a noise abatement measure.

(p) Common Noise Environment. A group of receivers exposed to similar noise sources and levels; traffic volumes, traffic mix, and speed; and topographic features. Generally, common noise environments occur between two secondary noise sources, such as interchanges, intersections, or cross-roads.

(q) Property Owner. An individual or group of individuals that own property or a residence.

(r) Substantial Construction. The granting of building permit, the filing of a plat plan, or the occurrence of a similar action prior to right-of-way acquisition or construction approval for the original highway.

(s) Severe Noise Impact. An absolute noise level in the future build condition that is between 10 and 20 dB(A) Leq(h) over the NAC, or a noise level increase between 30 and 40 dB(A) over the existing noise levels.

(t) L10. The sound level that is exceeded 10 percent of the time (the 90th percentile) for the period under consideration, with L10(h) being the hourly value of L10.

(u) Leq. The equivalent steady-state sound level which in a stated period of time contains the same acoustic energy as the time-varying sound level during the same time period, with Leq(h) being the hourly value of Leq.

§ 772.7 Applicability.

(a) This regulation applies to all Federal or Federal-aid Highway Projects authorized under title 23, United States Code. Therefore, this regulation applies to any highway project or multimodal project that:

(1) Requires FHWA approval regardless of funding sources, or

(2) Is funded with Federal-aid highway funds.

(b) This regulation shall be applied uniformly and consistently statewide.

(c) This regulation applies to all Type I projects unless the regulation specifically indicates that a section only applies to Type II or Type III projects.

(1) The development and implementation of Type II projects are not mandatory requirements of section 109(i) of title 23, United States Code.

(2) If a highway agency chooses to participate in a Type II program, the highway agency shall develop a priority system, based on a variety of factors, to rank the projects in the program. This priority system shall be submitted to and approved by FHWA before the highway agency is allowed to use Federal-aid funds for a project in the program.

(3) For a Type III project, a highway agency is not required to complete a noise analysis or consider abatement measures.

§ 772.9 Analysis of traffic noise impacts and abatement measures.

(a) The highway agency shall determine and analyze expected traffic noise impacts and alternative noise abatement measures to mitigate these impacts by giving weight to the benefits and costs of abatement and the overall social, economic, and environmental effects through feasible and reasonable noise abatement measures.

(b) A traffic noise analysis shall be completed for:

(1) Each alternative under detailed study;

(2) Each Activity Category of the NAC listed in Table 1 that is present in the study area;

(i) Activity Category A. This activity category includes lands on which serenity and quiet are of extraordinary significance and serve an important public need, and where the preservation of those qualities is essential for the area to continue to serve its intended purpose. Highway agencies shall submit justifications to the FHWA on a case-by-case basis for approval of an Activity Category A designation.

(ii) Activity Category B. This activity category includes single-family and multifamily residences, as well as a variety of special land use facilities. Each highway agency shall adopt a standard practice for analyzing these special land use facilities that is consistent and uniformly applied statewide.

(iii) Activity Category C. This activity category is comprised of commercial and industrial land use facilities.

(iv) Activity Category D. This activity includes undeveloped lands.

(A) A highway agency shall determine if undeveloped land is planned, designed, and programmed for development. A milestone or activity and its associated date for acknowledging when undeveloped land is considered planned, designed, and programmed shall be the date of issuance of a building permit, the date of final approval of the development plan, the date of recording of the plat plan, or any other date that demonstrates a local commitment for a specific design of land use activities intended for development on the property.

(B) If undeveloped land is determined to be planned, designed, and programmed, then the highway agency must determine noise impacts and, if impacts are determined, must consider abatement measures.

(C) If undeveloped land is not planned, designed, and programmed for development by the date of public knowledge, the highway agency shall determine noise levels and document the results in the project's environmental clearance documents and noise analysis documents. Federal participation in noise abatement measures will not be considered for lands that are not planned, designed, and programmed by the date of public knowledge.

(v) Activity Category E. A highway agency should only conduct an indoor analysis after fully completing an analysis of any existing outdoor activity area(s).

(3) For a Type I project:

(i) At least 500 feet from all termini of the build alternative(s);

(ii) At least 500 feet from the edge of the near travel lane;

(iii) For additional travel lanes and new roadways, for both sides of the road; and

(iv) For ramps and interchanges, within at least a 500-foot line of the near travel lane for the project.

(c) The traffic noise analysis shall include a(n):

(1) Identification of existing activities, developed lands, and undeveloped lands, which may be affected by noise from the highway;

(2) Determination and prediction of existing traffic noise levels; and

(3) Determination of traffic noise impacts for the design year;

(i) Highway agencies shall establish an approach level to be used when determining a traffic noise impact as at least 1 dB(A) less than the Noise Abatement Criteria listed in Table 1;

(ii) Highway agencies shall define substantial noise increase between 10 dB(A) to 15 dB(A) over existing noise levels. There is no lower threshold limit associated with a substantial noise increase, which is the difference between the existing and future noise levels.

(4) Assessment of Impacted and Benefited Receivers. Each highway agency shall define the threshold for the noise reduction which determines a benefited receiver as at least 5 dB(A).

(5) Examination and evaluation of feasible and reasonable noise abatement measures for reducing the traffic noise impacts. Each highway agency, with FHWA approval, shall develop feasibility and reasonableness factors. These factors, at a minimum, shall include the following:

(i) Feasibility:

(A) Achievement of at least a 5 dB(A) highway traffic noise reduction at the majority of the impacted receivers; and

(B) Determination that it is possible to design and construct a safe noise abatement measure.

(ii) Reasonableness:

(A) Consideration of the desires of the property owners of the impacted receivers; and

(B) Cost of the highway traffic noise abatement measures. Each highway agency shall determine, and receive FHWA approval for, the allowable cost of abatement by determining a baseline cost reasonableness value. This determination may include the actual construction cost of noise abatement, cost per square foot of abatement, and either the cost/benefited receiver or cost/benefited receiver/dB(A). The highway agency shall re-analyze the allowable cost for abatement on a regular interval, not to exceed 5 years. A highway agency has the option of justifying, for FHWA approval, different cost allowances for a particular geographic area(s) within the State.

(iii) In addition to the required reasonableness factors listed in § 772.9(c)(5)(ii), a highway agency may also include the following reasonableness factors: date of development, length of exposure to highway traffic noise impacts, exposure to higher absolute highway traffic noise levels, changes between existing and future build conditions, mixed zoning development, and noise compatible planning concepts. No single reasonableness factor should be used as the sole basis in determining reasonableness.

(d) On a Type I or Type II project, a highway agency shall only allow a third party to contribute additional funds towards the construction of a noise abatement measure or aesthetic treatments after the highway agency has determined that the noise abatement measure is feasible and reasonable.

(e) On a Type I and Type II project, a highway agency may average the cost of noise abatement among benefited receivers within a common noise environment.

(f) A highway agency proposing to use Federal-aid highway funds for a Type II project shall perform a noise analysis in accordance with § 772.9 of this part in order to provide information needed to make the determination required by § 772.11(a) of this part.

§ 772.11 Noise abatement.

(a) In determining and abating traffic noise impacts, a highway agency shall give primary consideration to exterior areas. Abatement will usually be necessary only where frequent human use occurs and a lowered noise level would be of benefit.

(b) In situations where no exterior activities are to be affected by the traffic noise, or where the exterior activities are far from or physically shielded from the roadway in a manner that prevents an impact on exterior activities, a highway agency shall use Activity Category E as the basis of determining noise impacts.

(c) If a noise impact is identified, a highway agency shall consider abatement measures. The abatement measures listed in § 772.13(c) of this chapter are eligible for Federal funding. At a minimum, the highway agency shall consider noise abatement in the form of a noise barrier.

(d) When noise abatement measure(s) are being considered, a highway agency shall make every reasonable effort to obtain substantial noise reductions which, at a minimum, shall be at least 5 dB(A) for the majority of the impacted receivers.

(e) Before adoption of a CE, FONSI, or ROD, the highway agency shall identify:

(1) Noise abatement measures which are feasible and reasonable, and which are likely to be incorporated in the project; and

(2) Noise impacts for which no noise abatement measures are feasible and reasonable.

(f) A highway agency must solicit the viewpoints from all of the benefited property owners, and receive responses from a majority of those solicited. The highway agency shall only solicit the viewpoints of the property owner(s) of a benefited receiver when determining reasonableness of a noise abatement measure. The highway agency shall not consider the viewpoints of other entities to determine reasonableness, unless explicitly authorized by the benefited property owner(s).

(g) The FHWA will not approve project plans and specifications unless feasible and reasonable noise abatement measures are incorporated into the plans and specifications to reduce the noise impact on existing activities, developed lands or undeveloped lands for which development is planned, designed, and programmed.

(h) For design build projects, the preliminary technical noise study shall document all considered and proposed noise abatement measures for inclusion in the NEPA document. Final design of design-build noise abatement measures shall be based on the preliminary noise abatement design developed in the technical noise analysis. Noise abatement measures shall be considered, developed, and constructed in accordance with this standard and in conformance with the provisions of 40 CFR 1506(c) and 23 CFR 636.109.

§ 772.13 Federal participation.

(a) Type I and Type II projects. Federal funds may be used for noise abatement measures when:

(1) Traffic noise impacts have been identified; and

(2) Abatement measures have been determined to be feasible and reasonable pursuant to § 772.9(c)(5) of this chapter.

(b) For Type II projects.

(1) Federal funds may be used for noise abatement measures, only if the funds:

(i) Were approved by FHWA before November 28, 1995; or

(ii) Were proposed along lands where land development or substantial construction predated the existence of any highway.

(2) FHWA will not approve noise abatement measures for locations where such measures were previously determined not to be reasonable and feasible for a Type I project.

(c) Noise Abatement Measures. The following noise abatement measures may be considered for incorporation into a Type I or Type II project to reduce traffic noise impacts. The costs of such measures may be included in Federal-aid participating project costs with the Federal share being the same as that for the system on which the project is located.

(1) Construction of noise barriers, including acquisition of property rights, either within or outside the highway right-of-way. Landscaping is not a viable noise abatement measure for Federal-aid funding; however, landscaping may be included into the highway design for aesthetic purposes.

(2) Traffic management measures including, but not limited to, traffic control devices and signing for prohibition of certain vehicle types, time-use restrictions for certain vehicle types, modified speed limits, and exclusive lane designations.

(3) Alteration of horizontal and vertical alignments.

(4) Acquisition of real property or interests therein (predominantly unimproved property) to serve as a buffer zone to preempt development which would be adversely impacted by traffic noise. This measure may be included in Type I projects only.

(5) Noise insulation of public use or nonprofit institutional structures.

Maintenance costs for noise insulation are not eligible for Federal-aid funding.

(d) Severe Noise Impact: Highway agencies shall define a severe noise impact. If a severe traffic noise impact is expected in the future build condition, the highway agency shall first determine if the abatement measures listed in paragraph (c) provide feasible and reasonable exterior noise abatement. If this is not achievable, the highway agency may consider the following options in the order in which they appear, and may recommend the option to FHWA for approval on a case-by-case basis.

(1) Exceed the allowable cost of abatement for the construction of feasible and reasonable exterior noise abatement, or

(2) Consider interior noise insulation of privately owned structures. Maintenance costs for noise insulation are not eligible for Federal-aid funding.

(e) Abatement Measure Reporting: Each highway agency shall maintain an inventory of all constructed noise abatement measures. The inventory shall include such parameters as abatement type, location, material, cost, noise reduction, and other parameters as deemed appropriate by FHWA. The FHWA will collect this information, in accordance with OMB's Information Collection requirements.

§ 772.15 Information for local officials.

(a) To minimize future traffic noise impacts on currently undeveloped lands, a highway agency shall inform local officials within whose jurisdiction the highway project is located of:

(i) Noise compatible planning concepts;

(ii) The best estimation of the distances from the edge of the travel lane of the highway improvement where the future noise levels meet the highway agency's definition of ''approach'' for developed and undeveloped lands or properties within the project limits;

(iii) Information that may be useful to local communities to protect future land development from becoming incompatible with anticipated highway noise levels; and

(iv) Non-eligibility for Federal-aid participation for a Type II project as described in § 772.11(b).

(b) A highway agency that chooses to use the date of development as one of the factors in determining the reasonableness of a noise abatement measure must have a statewide outreach program to inform local officials and the public of the items in § 772.15(a)(i)–(iv).

§ 772.17 Traffic noise prediction.

(a) Any analysis required by this subpart must use the FHWA FHWA TNM, which is described in ''FHWA Traffic Noise Model'' Report No. FHWA–PD–96–010, including Revision No. 1, dated April 14, 2004, or any other model determined by the FHWA to be consistent with the methodology of the FHWA TNM. These publications are incorporated by reference in accordance with section 552(a) of title 5, U.S.C. and part 51 of title 1, CFR, and are on file at the National Archives and Record Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* These documents are available for copying and inspection at the Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, as provided in part 7 of title 49, CFR. These documents are also available on the FHWA's Traffic Noise Model Web site at the following URL: *http://www.fhwa.dot.gov/environment/noise/index.htm.*

(b) In lieu of the requirement in section 772.17(a), a highway agency may choose to use the FHWA TNM Look-up, which is described in ''FHWA Traffic Noise Model Version 2.5 Look-up Tables User's Guide'' Report No. FHWA–HEP–05–008 as a screening tool to determine that traffic noise impacts do not exist. The FHWA TNM Look-up provides a reference of pre-calculated FHWA TNM results for simple highway geometries and, therefore, has limitations associated with it as described in Report No. FHWA–HEP–05–008. If a highway agency chooses to utilize the FHWA TNM Look-up, the Federal-aid highway project shall be within these limitations:

(1) The FHWA TNM Look-up shall not be used for roadways with more than two travel lanes, with total paved widths greater than 24 feet including shoulders and median, or containing intersections.

(2) The FHWA TNM Look-up results shall be evaluated with at least a 5 dB(A) safety factor, where:

(i) The output from the FHWA TNM Look-up is 5 dB(A) or less from the NAC, then the highway agency must develop a project model in accordance with § 772.17(a).

(ii) The output from the FHWA TNM Look-up is greater than 5 dB(A) from the NAC and/or the comparison between the existing condition to future build conditions is less than the highway agency's definition of substantial noise increase, then the highway agency may document that there are no impacts associated with the project.

(3) The FHWA TNM Look-up shall not be used to determine feasible and reasonable noise abatement measures.

(c) Noise contour lines may be used for land use planning but shall not be used for determining highway traffic noise impacts.

(d) In predicting noise levels and assessing noise impacts, traffic characteristics that would yield the worst traffic noise impact for the design year shall be used.

§ 772.19 Construction noise.

For all Type I and II projects, a highway agency shall:

(a) Identify land uses or activities that may be affected by noise from construction of the project. The identification is to be performed during the project development studies.

(b) Determine the measures that are needed in the plans and specifications to minimize or eliminate adverse construction noise impacts to the community. This determination shall include a weighing of the benefits achieved and the overall adverse social, economic, and environmental effects and costs of the abatement measures.

(c) Incorporate the needed abatement measures in the plans and specifications.

TABLE 1 TO PART 772—NOISE ABATEMENT CRITERIA

[Hourly A-weighted sound level decibels (dBA) [1]]

Activity category	Activity criteria [2]		Evaluation location	Activity description
	Leq(h)	L10(h)		
A	57	60	Exterior	Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.
B	67	70	Exterior	Picnic areas, recreation areas, playgrounds, active sport areas, parks, residences, motels, hotels, schools, places of worship, libraries, hospitals, cemeteries, campgrounds, trails, and trail crossings.
C	72	75	Exterior	Developed lands, properties, or activities not included in Categories A or B above.
D				Undeveloped lands.
E	52	55	Interior	Residences, motels, hotels, public meeting rooms, schools, places of worship, libraries, hospitals, and auditoriums.

[1] Either Leq(h) or L10(h) (but not both) may be used on a project.
[2] The Leq(h) and L10(h) Activity Criteria values are for impact determination only, and are not design standards for noise abatement measures.

[FR Doc. E9–22386 Filed 9–16–09; 8:45 am]
BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2004–0488; FRL–8956–5]

Protection of the Stratospheric Ozone: Alternatives for the Motor Vehicle Air Conditioning Sector Under the Significant New Alternatives Policy (SNAP) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Data availability.

SUMMARY: Under section 612 of the Clean Air Act, the Environmental Protection Agency (EPA) reviews and lists as acceptable alternatives to ozone-depleting substances (ODS). In 2006, EPA proposed to list R–744 (CO_2) as ''acceptable with use conditions'' as a substitute for CFC–12 in the motor vehicle air conditioning (MVAC) end-use within the refrigeration and air-conditioning sector. When using CO_2 as a refrigerant, MVAC systems would be required to use the refrigerant according to those legally enforceable conditions. EPA proposed use conditions because of the potential risk of exposure to elevated concentrations of CO_2 within the passenger compartment if there was a leak of the MVAC system. Elevated CO_2 levels could cause passengers, and of particular concern, the driver, to become drowsy. Since the time of the proposed rule, additional information regarding the effects of short-term CO_2 exposures has become available and EPA is now making that information available to the public. As noted in the proposed rule, EPA is considering whether to establish a breathing zone ceiling and this short-term exposure information is relevant to EPA's decision on this issue. In addition, EPA is providing the public with opportunity to respond to an issue raised in a public comment on the proposed rule.

DATES: Comments must be received on or before November 16, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0488, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov*.
- *Fax:* 202–566–1741.
- *Mail:* EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA–HQ–OAR–2004–0488, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* Public Reading Room, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0488. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Melissa Fiffer, Stratospheric Protection Division, Office of Atmospheric

Programs (6205J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, *telephone number:* (202) 343–9464, *fax number:* (202) 343–2363; *e-mail address: fiffer.melissa@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline

1. What is today's action?

This notice of data availability (NODA) makes available to the public a human health effects review of R–744 (CO_2) that EPA will consider as it moves forward to address its proposed ''acceptable subject to use conditions'' listing for R–744 in MVACs. In the proposed rule (71 FR 55140), EPA noted that a maximum CO_2 concentration never to be exceeded (''ceiling limit'') in the space where people breathe (''breathing zone'') may be needed in addition to the proposed CO_2 exposure limit of 3.0% by volume averaged over 15 minutes. A breathing zone ceiling limit may provide additional assurance regarding vehicle driver alertness. EPA subsequently hired a contractor to examine the human health effects of elevated CO_2 concentrations within the confined space of a vehicle passenger compartment. Today we are making available for comment the contractor-authored memo on ceiling limits for R–744 in the passenger compartment space of a motor vehicle. This memo reflects the latest information on short-term exposure to R–744 in an enclosed space.

In 2006, EPA proposed to amend the acceptability of R–744 to include the use condition that MVAC systems must be designed to avoid occupant exposure to concentrations above the CO_2 short-term exposure limit of 3% averaged over 15 minutes. In the proposal, EPA also suggested including a ceiling limit within the 3% average limit. Based on the analysis in the contractor-author memo made available today, EPA is considering a ceiling limit of 4% R–744, or 40,000 parts per million (ppm). This ceiling limit could not be exceeded for any duration inside the passenger compartment.

In addition, during the public comment period, one commenter suggested that the proposed use conditions should be clarified to address whether the same standard applies or whether a requirement even applies when the motor vehicle ignition is off.

2. What information is EPA making available for review and comment?

EPA is making available, for review and comment, a contractor-authored memo on the toxicological impacts of short-term exposure to CO_2 in the confined space of a vehicle passenger compartment, ''Review of Health Impacts from Short-Term Carbon Dioxide Inhalation Exposures,'' as well as the papers cited in the memo. This memo provides information concerning a ceiling limit for the passenger compartment of vehicles using R–744 in MVAC systems. In addition, the public comment concerning application of the proposed use conditions when the ignition is off is available in the public docket as item EPA–HQ–OAR–2004–0488–35.1.

3. Where can I get the information?

All of the information can be obtained through the Air Docket and at *http://www.regulations.gov* (*see* **ADDRESSES** section above for docket contact information).

4. What is EPA taking comment on and what supporting documentation do I need to include in my comments?

EPA is only accepting comment on two topics:

1. Whether EPA should include a ceiling limit of 4% R–744, or 40,000 ppm, in the final rule on the use of R–744 in new MVAC systems, in addition to the short-term exposure limit of 3% averaged over 15 minutes, and

2. Whether the proposed use conditions on R–744 in new MVAC systems should apply when the ignition is off.

Commenters may provide any published studies or supporting statements. At this time, EPA is not requesting comments of a general or editorial nature. EPA is not accepting comments more generally on the proposed listing of R–744 as acceptable with use conditions. Interested readers are directed to 71 FR 55140 for additional information regarding EPA's proposed listing of R–744 as acceptable with use conditions in the MVAC sector.

5. What should I consider as I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information or data you used that support your views.

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the comment period deadline identified.

6. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and Federal Register citation related to your comments.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: August 14, 2009.

Brian J. McLean,

Director, Office of Atmospheric Programs.

[FR Doc. E9–22425 Filed 9–16–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–2026; MB Docket No. 09–162; RM–11559]

Television Broadcasting Services; Opelika, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Pappas Telecasting of Opelika, L.P. (''Pappas''), licensee of station WLGA(TV), channel 47, Opelika, Alabama. Pappas requests the substitution of channel 30 for its allotted post-transition channel 47 at Opelika and to make related changes to its technical parameters.

DATES: Comments must be filed on or before October 2, 2009, and reply comments on or before October 13, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Lee G. Petro, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: David J. Brown, *david.brown@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–162, adopted September 2, 2009, and released September 9, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments Under Alabama, is amended by adding DTV channel 30 and removing DTV channel 47 at Opelika.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–22402 Filed 9–16–09; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 74, No. 179
Thursday, September 17, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 14, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Census of Agriculture Content Test.

OMB Control Number: 0535–0243.

Summary of Collection: The purpose of the content test is to evaluate factors impacting the National Agricultural Statistics Service (NASS) Census of Agriculture program. The factors include, but are not limited to, respondent burden, questionnaire format and design, new items, changes in question wording and location, ease of completion, and processing methodology such as edit and summary. The proposed forms and letters will be used in a 2010 and 2011 test in preparation for taking the 2012 Census of Agriculture. NASS is responsible for conducting the Census of Agriculture under the authority of the Census of Agriculture Act of 1997, Public Law 105–113 (U.S.C. 2204g).

Need and Use of the Information: The Census of Agriculture Content Test is critical to NASS' ability to design a successful census survey. The actual Census of Agriculture is required by law every five years and serves as the basis for many agriculturally-based decisions. Less frequent content test collections would hinder NASS' ability to adequately evaluate changes needed to improve census data collection and therefore recognize changing trends in agriculture.

Description of Respondents: Farms.

Number of Respondents: 35,450.

Frequency of Responses: Reporting: Other (every 5 years).

Total Burden Hours: 21,588.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–22419 Filed 9–16–09; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 14, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Economic Research Service

Title: Food Security Supplement to the Current Population Survey.

OMB Control Number: 0536–0043.

Summary of Collection: The Food Security Supplement is sponsored by the Economic Research Service (ERS) as a research and evaluation activity authorized under section 17 of the Food Stamp Act of 1977 as amended. ERS is collaborating with the Food and Nutrition Service (FNS) and the Bureau of Census to continue this program of research and development. The Supplemental Nutrition Assistance Program (SNAP) is currently the primary source of nutrition assistance for low-income Americans enabling

households to improve their diet by increasing their food purchasing power. As the nation's primary public program for ensuring food security and alleviating hunger, the SNAP needs to regularly monitor food security conditions among its target population. This monitoring need requires that USDA continue basic data collection, analysis, and evaluation.

Need and Use of the Information: The data collected by the food security supplement will be used to monitor the prevalence of food security and the prevalence and severity of food insecurity among the Nation's households. The prevalence of these conditions as well as year-to-year trends in their prevalence will be estimated at the national level and for population subgroups. The data also will be used to monitor the amounts that households spend for food and their use of community food pantries and emergency kitchens.

Description of Respondents: Individuals or Households.

Number of Respondents: 54,400.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 6,916.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–22421 Filed 9–16–09; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Federal Fisheries Permits.

OMB Control Number: 0648–0203.

Form Number(s): NA.

Type of Request: Regular submission.

Number of Respondents: 341.

Average Hours per Response: Exempted Fishing Permit (EFP) proposal, 8 hours; EFP application, 20 minutes; EFP pre-season plan, 16 hours; EFP trip/delivery notifications, 2 minutes; EFP data reports, 43 minutes; EFP summary reports, 24 hours; Limited Entry Permit (LEP) renewal, 20 minutes; LEP transfer, 30 minutes; ownership interest forms for sablefish-endorsed LEP, 10 minutes.

Burden Hours: 1,996.

Needs and Uses: The National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) collects certain information to determine whether a respondent complies with regulations that pertain to the issuance, transfer, ownership interest or renewal of a Pacific Coast Groundfish limited entry permit or exempted fishing permit. Also, NMFS collects information from permit owners and vessel owners to assist NMFS with its enforcement responsibilities. Exempted fishing permit holders may be required to provide descriptions of planned fishing activities, periodic data reports, preseason plans, and summary reports. The respondents are mainly groundfish fishermen or fishing companies or partnerships. Other respondents include State fishery agencies, non-profit groups, or fishing associations who sponsor research carried out under exempted fishing permits. These requirements were developed by the Pacific Fishery Management Council (PFMC) under the authority of the *Magnuson-Stevens Fishery Conservation and Management Act*, U.S.C. 1801 *et seq.* (Magnuson-Stevens Act).

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: September 11, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–22353 Filed 9–16–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO), in order to extend the public comment period due to a delay in submission, is republishing the Comment Request originally published on August 11, 2009 (74 FR 40165). This notice announces the intent to submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35)

Agency: United States Patent and Trademark Office (USPTO).

Title: Customer Panel Quality Survey.

Form Number(s): None.

Agency Approval Number: 0651–0057.

Type of Request: Revision of a currently approved collection.

Burden: 406 hours.

Number of Respondents: 2,386 responses.

Avg. Hours per Response: The USPTO estimates that it takes the public approximately 10 minutes (0.17 hours) to complete either the paper or the online survey. This includes the time to gather the necessary information, respond to the survey, and submit it to the USPTO.

Needs and Uses: Individuals who work at firms that file more than six patent applications a year use the Customer Panel Quality Survey to provide the USPTO with their perceptions of examination quality. The USPTO uses the feedback gathered from the survey to assist them in targeting key areas for examination quality improvement and to identify important areas for examiner training.

Affected Public: Individuals or households; business or other for profit; and not-for-profit institutions.

Frequency: Semi-annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A._Fraser@omb.eop.gov*.

Once submitted, the request will be publically available in electronic format through the Information Collection Review page at *http://www.reginfo.gov*.

Paper copies can be obtained by:

* *E-mail: Susan.Fawcett@uspto.gov.* Include ''0651–0057 Customer Panel Quality Survey copy request'' in the subject line of the message.

* *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.

* *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Administrative Management Group, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before October 19, 2009 to Nicholas A. Fraser, OMB Desk Officer, via e-mail at *Nicholas_A._Fraser@omb.eop.gov* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: September 10, 2009.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Administrative Management Group.

[FR Doc. E9–22376 Filed 9–16–09; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL85

Record of Decision (ROD) for the Final Environmental Impact Statement/ Environmental Impact Report for Replacement of the National Oceanic and Atmospheric Administration's Southwest Fisheries Science Center Located in La Jolla, California

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: National Environmental Policy Act (NEPA) Record of Decision.

SUMMARY: NOAA issues this notice to inform the public that an ROD has been approved for replacement of the Southwest Fisheries Science Center (SWFSC) at the Scripps Institution of Oceanography (SIO) within the University of California at San Diego (UCSD) campus in La Jolla, California. NOAA signed the ROD on August 20, 2009.

ADDRESSES: Request for copies of the ROD may be directed to Mr. Mark Eberling, NOAA Project Planning and Management Decision, Western Region, 7600 Sand Point Way, N.E., WC41, Bin 15700, Seattle, WA 98115–0070. Copies of the Final EIS/EIR are available for review at the UCSD library, at the existing SWFSC, and at La Jolla Public Library. Additionally, an electronic copy is available at *http://www.seco.noaa.gov/ENV/NEPA/Sites/LaJolla__NEPA.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Eberling, NOAA Project Planning and Management Decision, Western Region, 7600 Sand Point Way, N.E., WC41, Bin 15700, Seattle, WA 98115–0070. Tel. (206)526–6477, email: *mark.a.eberling@noaa.gov*

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Services (NMFS) is responsible for the management, conservation, and protection of living marine resources within the U.S. Exclusive Economic Zone. The SWFSC in La Jolla, CA manages and conducts research involving Pacific fisheries and marine mammal research for the protection and management of these resources throughout Western Pacific and Antarctica. The existing SWFSC facility, built in 1964, is currently adjacent to a coastal bluff that is undergoing severe erosion and retreat.

NOAA will implement the proposed action analyzed in the Final Environmental Impact Statement/ Environmental Impact Report. NOAA will construct and operate a new SWFSC building at a 3.3 acre undeveloped property located across La Jolla Shores Drive from the existing facility. A minimum of two existing at-risk SWFSC structures will be removed and the property currently used by NOAA will be returned to UCSD. The new building will be constructed in conformance with Leadership in Energy and Environmental Design principles to minimize impacts to the environment. The ROD contains a number of measures to mitigate environmental effect of the planned action.

Dated: September 11, 2009.

William F. Broglie,

Chief Administrative Officer, National Oceanic and Atmospheric Administration, Department of Commerce.

[FR Doc. E9–22416 Filed 9–16–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AV15

Public Meetings on Protective Regulations for Killer Whales in the Northwest Region Under the Endangered Species Act and Marine Mammal Protection Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; notification of additional public meeting.

SUMMARY: We, the National Marine Fisheries Service (NMFS) are issuing this notice to advise the public that NMFS is adding an additional public meeting regarding proposed regulations under the Endangered Species Act and Marine Mammal Protection Act to prohibit vessels from approaching killer whales within 200 yards and from parking in the path of whales for vessels in inland waters of Washington State. The proposed regulations would also prohibit vessels from entering a conservation area during a defined season. The proposed rule was published July 29, 2009, and includes information on two public meetings. We are issuing this notice to announce a third public meeting in Anacortes, WA that has been added in response to requests for additional public meetings to allow for greater public participation.

DATES: Three public meetings will be held as follows:

(1) September 24, 2009, 7–9 p.m., Pier One Main Warehouse, 100 Commercial Avenue, Anacortes, WA;

(2) September 30, 2009, 7–9 p.m., Seattle Aquarium, Pier 59, Seattle, WA; and

(3) October 5, 2009, 7–9 p.m., The Grange Hall, First Street, Friday Harbor, WA.

Written or electronic comments on the proposed rule and draft Environmental Assessment (EA) from all interested parties are encouraged and must be received no later than October 27, 2009. All comments and material received, including names and addresses, will become part of the administrative record and may be released to the public.

ADDRESSES: Comments on the proposed rule, draft EA and any of the supporting documents can be submitted by any of the following methods:

- Email: *orca.plan@noaa.gov*.
- Federal e-rulemaking Portal: *http://www.regulations.gov*.
- Mail: Assistant Regional Administrator, Protected Resources Division, Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115.

The draft EA and other supporting documents are available on Regulations.gov and the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/*.

You may submit information and comments concerning this Proposed Rule, the draft EA, or any of the supporting documents by any one of several methods identified above. We will consider all comments and information received during the comment period in preparing a final

rule. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment- including your personal identifying information- may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Lynne Barre, Northwest Regional Office, 206–526–4745; or Trevor Spradlin, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2009, NMFS proposed regulations under the Endangered Species Act and Marine Mammal Protection Act to prohibit vessels from approaching killer whales within 200 yards and from parking in the path of whales for vessels in inland waters of Washington State (74 FR 37674). The proposed regulations would also prohibit vessels from entering a conservation area during a defined season. Certain vessels would be exempt from the prohibitions. The purpose of the action is to protect killer whales from interference and noise associated with vessels. In the final rule announcing the endangered listing of Southern Resident killer whales NMFS identified disturbance and sound associated with vessels as a potential contributing factor in the recent decline of this population. The Recovery Plan for Southern Resident killer whales calls for evaluating current guidelines and assessing the need for regulations and/or protected areas. We developed the proposed rule after considering comments submitted in response to an Advance Notice of Proposed Rulemaking (72 FR 13464; March 22, 2007) and preparing a draft environmental assessment (EA).

Reasonable Accommodation

Persons needing reasonable accommodations to attend and participate in the public meetings should contact Lynne Barre (see **FOR FURTHER INFORMATION CONTACT**). To allow sufficient time to process requests, please call at least 5 business days prior to the relevant meeting(s).

Dated: September 11, 2009.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–22414 Filed 9–16–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2009–0037]

Request for Comments on Interim Examination Instructions for Evaluating Patent Subject Matter Eligibility

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) has prepared interim examination instructions for evaluating patent subject matter eligibility under 35 U.S.C. 101 (Interim Patent Subject Matter Eligibility Examination Instructions) pending a decision by the U.S. Supreme Court in *Bilski* v. *Kappos*. The Interim Patent Subject Matter Eligibility Examination Instructions will be for use by USPTO personnel in their review of patent applications to determine whether the claims in a patent application are directed to patent eligible subject matter under 35 U.S.C. 101. The USPTO is requesting comments from the public regarding the Interim Patent Subject Matter Eligibility Examination Instructions.

DATES: *Comment Deadline Date:* To be ensured of consideration, written comments must be received on or before September 28, 2009. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to *AB98.Comments@uspto.gov*. Comments may also be submitted by facsimile to (571) 273–0125, marked to the attention of Caroline D. Dennison. Although comments may be submitted by mail or facsimile, the USPTO prefers to receive comments via the Internet.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the Office Internet Web site (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Caroline D. Dennison, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at 571–272–7729, or by facsimile transmission to 571–273–0125, marked to the attention of Caroline D. Dennison.

SUPPLEMENTARY INFORMATION: The USPTO has prepared Interim Patent Subject Matter Eligibility Examination Instructions for evaluating patent subject matter eligibility under 35 U.S.C. 101. The Interim Patent Subject Matter Eligibility Examination Instructions are based on the USPTO's current understanding of the law and are believed to be fully consistent with binding precedent of the U.S. Supreme Court, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) and the Federal Circuit's predecessor courts. The USPTO posted the Interim Patent Subject Matter Eligibility Examination Instructions on its Internet Web site (*http://www.uspto.gov*) on August 27, 2009, with a notice requesting public comment on the Interim Patent Subject Matter Eligibility Examination Instructions and indicating that written comments must be received on or before September 28, 2009, to be ensured of consideration.

The Interim Patent Subject Matter Eligibility Examination Instructions do not constitute substantive rule making and hence do not have the force and effect of law. Rejections are and will continue to be based upon the substantive law, and it is these rejections that are appealable. Consequently, any perceived failure by USPTO personnel to follow the Interim Patent Subject Matter Eligibility Examination Instructions is neither appealable nor petitionable.

The U.S. Supreme Court granted certiorari in *Bilski,* S.Ct. No. 08–964. *See* 556 U.S.___ (June 1, 2009). The USPTO expects that a decision in *Bilski* will be rendered sometime before the end of June 2010. The Interim Patent Subject Matter Eligibility Examination Instructions are to provide instructions to examiners pending a final decision from the Supreme Court in *Bilski.* Following the Supreme Court's decision in *Bilski*, the USPTO will revise its examination instructions for evaluating patent subject matter eligibility under 35 U.S.C. 101 for consistency with the Supreme Court's decision.

The Interim Patent Subject Matter Eligibility Examination Instructions merely revise USPTO examination practice for consistency with the USPTO's current understanding of the case law regarding patent subject matter eligibility under 35 U.S.C. 101. Therefore, the Interim Patent Subject Matter Eligibility Examination Instructions relate only to interpretative rules, general statements of policy, or rules of agency organization, procedure,

or practice. The USPTO is providing this opportunity for public comment because the USPTO desires the benefit of public comment on the Interim Patent Subject Matter Eligibility Examination Instructions; however, notice and an opportunity for public comment are not required under 5 U.S.C. 553(b) or any other law. *See Cooper Techs. Co.* v. *Dudas*, 536 F.3d 1330, 1336–37, 87 U.S.P.Q.2d 1705, 1710 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rule making for '' 'interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.' '' (quoting 5 U.S.C. 553(b)(A))). Persons submitting written comments should note that the USPTO may not provide a ''comment and response'' analysis of such comments as notice and an opportunity for public comment are not required under 5 U.S.C. 553(b) or any other law.

Dated: September 11, 2009.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E9–22420 Filed 9–16–09; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR64

Marine Mammals; File No. 1000–1617

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; withdrawal of application.

SUMMARY: Notice is hereby given that Whitlow Au, PhD, University of Hawaii, Hawaii Institute of Marine Biology, Marine Mammal Research Program, PO Box 1106, Kailua, Hawaii 96734, has withdrawn an application to amend Scientific Research Permit No. 1000–1617–04.

ADDRESSES: The documents related to this action are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941.

FOR FURTHER INFORMATION CONTACT: Kristy Beard or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 16, 2009, a notice was published in the **Federal Register** (74 FR 17635) that Dr. Au had submitted an application to amend Permit No. 1000–1617–04, which authorizes behavioral observations, photo-identification, genetic sampling, and suction-cup tagging of cetaceans in Hawaii and California. The amendment was requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), and the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The applicant has withdrawn his application.

Dated: September 14, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–22415 Filed 9–16–09; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, September 24, 2009, 2 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED: Compliance Status Report (Monthly)—Commission Briefing.

The staff will brief the Commission on various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: September 11, 2009.

Todd A. Stevenson,

Secretary.

[FR Doc. E9–22397 Filed 9–16–09; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, September 22, 2009, 2 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED: Compliance Weekly Report—Commission Briefing

The staff will brief the Commission on various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: September 11, 2009.

Todd A. Stevenson,

Secretary.

[FR Doc. E9–22396 Filed 9–16–09; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0036]

K.S. Trading Corporation, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with K.S. Trading Corporation, containing a civil penalty of $35,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 2, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0036, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: September 14, 2009.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, K.S. Trading Corporation (''K.S. Trading'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. K.S. Trading is a corporation organized and existing under the laws of the State of New Jersey, with its principal offices located in Moonachie, NJ. K.S. Trading is an importer of apparel.

Staff Allegations

4. Between June 26, 2007 and July 11, 2007, K.S. Trading imported about 5,740 boys' hooded sweatshirts with drawstrings (''Drawstring Sweatshirts'') that were distributed from July 2007 to August 2007 to several nationwide retailers, who in-turn sold them to consumers under the ''Raw Blue'' trade name.

5. The Drawstring Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, K.S. Trading was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a) (5), (8), and (11), 15 U.S.C. 2052(a)(5), (8), and (11).

6. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

7. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, which incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

8. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

9. K.S. Trading reported to the Commission there had been no incidents or injuries involving Drawstring Sweatshirts.

10. K.S. Trading's manufacture and distribution in commerce of the Drawstring Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

11. On August 6, 2008, the Commission and K.S. Trading announced a recall of the Drawstring Sweatshirts. The recall informed consumers that they should immediately remove the drawstrings to eliminate the hazard.

12. K.S. Trading had presumed and actual knowledge that the Drawstring Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). K.S. Trading had obtained information that reasonably supported the conclusion that the Drawstring Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required K.S. Trading to immediately inform the Commission of the defect and risk.

13. K.S. Trading knowingly failed to immediately inform the Commission about the Drawstring Sweatshirts as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected K.S. Trading to civil penalties.

K.S. Trading's Response

14. K.S. Trading denies the Staff's allegations that K.S. Trading violated the CPSA.

Agreement of the Parties

15. Under the CPSA, the Commission has jurisdiction over this matter and over K.S. Trading.

16. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by K.S. Trading, or a determination by the Commission, that K.S. Trading has knowingly violated the CPSA.

17. In settlement of the Staff's allegations, K.S. Trading shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

18. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

19. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, K.S. Trading knowingly, voluntarily, and completely waives any rights it may have regarding the Staff's allegations to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether K.S. Trading failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

20. The Commission may publicize the terms of the Agreement and the Order.

21. The Agreement and the Order shall apply to, and be binding upon,

K.S. Trading and each of its successors and assigns.

22. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject those referenced in paragraph 21 above to appropriate legal action.

23. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

24. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and K.S. Trading agree that severing the provision materially affects the purpose of the Agreement and the Order.

K.S. Trading Corporation

Dated: July 14, 2009.

Shin Auk Kang,
President and Chief Executive Officer, K.S. Trading Corporation,
75 Knickerbocker Road, Moonachie, NJ 07074.

Dated: July 20, 2009.

Jay R. McDaniel, Esquire,
Counsel for Respondent K.S. Trading Corporation, McDaniel & Chusid, LLP,
54 Main Street, Hackensack, NJ 07601–7007.

U.S. Consumer Product Safety Commission.

Cheryl A. Falvey,
General Counsel.

Ronald G. Yelenik,
Assistant General Counsel, Office of the General Counsel.

Dated: July 21, 2009.

Dennis C. Kacoyanis,
Trial Attorney, Division of Compliance, Office of the General Counsel.

Order

Upon consideration of the Settlement Agreement entered into between K.S. Trading Corporation (''K.S. Trading'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over K.S. Trading, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that K.S. Trading shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury. Upon the failure of K.S. Trading to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by K.S. Trading at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 4th day of September 2009.

By order of the Commission.
Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–22398 Filed 9–16–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0035]

Maran, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with Maran, Inc., containing a civil penalty of $50,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 2, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment 09–C0035, Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: September 14, 2009.

Todd A. Stevenson,
Secretary.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Maran, Inc. (''Maran'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. Maran is a corporation organized and existing under the laws of the State of Delaware, with its principal offices located in North Bergen, NJ. Maran is an importer of apparel.

Staff Allegations

4. Maran imported about 6,000 girls' corduroy jackets with pink hoods and drawstrings (''Drawstring Jackets''). From April 30, 2006 to May 25, 2006, Maran imported the Drawstring Jackets and sold them from January 27, 2007 to January 29, 2009 to a major nationwide retailer who in turn sold them to consumers.

5. The Drawstring Jackets are ''consumer product[s],'' and, at all times relevant hereto, Maran was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (11), 15 U.S.C. § 2052(a)(5), (8), and (11).

6. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

7. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, which incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure

garments they sell conform to the voluntary standard.

8. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

9. Maran reported to the Commission there had been no incidents or injuries involving Drawstring Jackets.

10. Maran's manufacture and distribution in commerce of the Drawstring Jackets did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

11. On May 15, 2008, the Commission and Maran announced a recall of the Drawstring Jackets. The recall informed consumers that they should immediately remove the drawstrings to eliminate the hazard.

12. Maran had presumed and actual knowledge that the Drawstring Jackets distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Maran had obtained information that reasonably supported the conclusion that the Drawstring Jackets contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. § 2064(b)(3) and (4), required Maran to immediately inform the Commission of the defect and risk.

13. Maran knowingly failed to immediately inform the Commission about the Drawstring Jackets as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Maran to civil penalties.

Maran's Response

14. Maran denies the Staff's allegations that Maran violated the CPSA.

Agreement of the Parties

15. Under the CPSA, the Commission has jurisdiction over this matter and over Maran.

16. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Maran, or a determination by the Commission, that Maran has knowingly violated the CPSA.

17. In settlement of the Staff's allegations, Maran shall pay a civil penalty in the amount of fifty thousand dollars ($50,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

18. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

19. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Maran knowingly, voluntarily, and completely waives any rights it may have regarding the Staff's allegations to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Maran failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

20. The Commission may publicize the terms of the Agreement and the Order.

21. The Agreement and the Order shall apply to, and be binding upon, Maran and each of its successors and assigns.

22. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject those referenced in paragraph 21 above to appropriate legal action.

23. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

24. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Maran agree that severing the provision materially affects the purpose of the Agreement and the Order.

Maran, Inc.

Dated: *May 18, 2009*

By: _____

David Greenberg,
President and Chief Executive Officer.

Maran, Inc., 4301–15 Tonnelle Avenue, North Bergen, NJ 07407.

Dated: *May 19, 2009*

By: _____

Robert L. Mulligan III, Esquire,
Counsel for Respondent Maran, Inc.

126 State Street, Hackensack, NJ 07601.

U.S. Consumer Product Safety Commission.

Cheryl A. Falvey,
General Counsel.

Ronald G. Yelenik,
Assistant General Counsel, Office of the General Counsel.

Dated: *05/22/09*

By: _____

Dennis C. Kacoyanis,
Trial Attorney, Division of Compliance.

Office of the General Counsel

Order

Upon consideration of the Settlement Agreement entered into between Maran, Inc. (''Maran'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Maran, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further Ordered, that Maran shall pay a civil penalty in the amount of fifty thousand dollars ($50,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United

States Treasury. Upon the failure of Maran to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Maran at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the *4th* day of *September* 2009.

By Order of the Commission.

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–22399 Filed 9–16–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2009–OS–0133]

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC), DOD.

ACTION: Notice of Proposed Amendments to the Manual for Courts-Martial, United States (2008 ed.) (MCM) and Notice of Public Meeting.

SUMMARY: The Department of Defense is considering recommending changes to the *Manual for Courts-Martial, United States* (2008 Edition) (MCM). The proposed changes constitute the 2009 annual review required by the MCM and DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 3, 2003 (DoD Directive 5500.17). The proposed changes concern the rules of procedure and evidence and the punitive articles applicable in trials by courts-martial. These proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation, Processing and Coordinating Legislation, Executive Orders, Proclamations, Views Letters Testimony,'' June 15, 2007, and do not constitute the official position of the Department of Defense, the Military Departments, or any other Government agency.

This notice also sets forth the date, time and location for the public meeting of the JSC to discuss the proposed changes.

This notice is provided in accordance with DoD Directive 5500.17. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

In accordance with paragraph III.B.4 of the Internal Organization and Operating Procedures of the JSC, the committee also invites members of the public to suggest changes to the Manual for Courts-Martial.

DATES: Comments on the proposed changes must be received no later than November 16, 2009, to be assured consideration by the JSC. A public meeting for comments will be held on October 29, 2009 at 10:30 a.m.

ADDRESSES: A public meeting for comments will be held on October 29, 2009, at 10:30 a.m. in the 8th Floor Conference Room, 1501 Wilson Blvd., Rosslyn, VA 22209–2460.

You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Stacia Gawronski, Executive Secretary, Joint Service Committee on Military Justice, Office of the Judge Advocate General, Criminal Law Division (Code 20), 1254 Charles Morris Street, SE., Suite B01, Washington Navy Yard, District of Columbia 20374, (202) 685–7683, e-mail *stacia.gawronski@navy.mil*.

SUPPLEMENTARY INFORMATION: The proposed amendments by Executive Order to the MCM are as follows:

Section 1. Part III of the Manual for Courts-Martial, United States, is amended as follows:

(a) M.R.E. 504 (c)(2)(D) is added to read as follows: ''(D) Where both parties have been substantial participants in illegal activity, those communications between the spouses during the marriage regarding the illegal activity in which they have jointly participated are not marital communications for purposes of the privilege in subdivision (b), and are not entitled to protection under the privilege in subdivision (b).''

(b) The following amendments conform M.R.E. 609 to F.R.E. 609:

(1) M.R.E. 609 (a) is amended to substitute the words ''character for truthfulness'' for the word ''credibility.''

(2) M.R.E. 609 (a)(2) is amended to substitute the words ''regardless of the punishment, if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness'' for the words ''if it involved dishonesty or false statement, regardless of the punishment.''

(3) M.R.E. 609(c) is amended to substitute the words ''a subsequent crime that was punishable by death, dishonorable discharge, or imprisonment in excess of one year'' for the words ''a subsequent crime which was punishable by death, dishonorable discharge, or imprisonment in excess of one year.''

Section 2. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 13, Article 89, Disrespect toward a superior commissioned officer, paragraph c.(1) is amended to substitute the words ''uniformed service'' for ''armed forces'' everywhere the words ''armed forces'' appear in that paragraph. This change is made to clarify that the uniformed officers of the Public Health Service and the National Oceanographic and Atmospheric Administration, when assigned to and serving with the armed forces, are included in the definition of a superior commissioned officer.

(b) A clerical amendment is made to Paragraph 35, Article 111, Drunken or reckless operation of vehicle, aircraft or vessel, paragraph f to read as follows:

''(f) *Sample Specification*.

In that ___ (personal jurisdiction data), did (at/on board—location) (subject matter jurisdiction data, if required), on or about ___, 20 __, (in the motor pool area) (near the Officer's Club) (at the intersection of ___ and ___) (while in the Gulf of Mexico) (while in flight over North America) physically control [a vehicle, to wit: (a truck) (a passenger car) (___)] [an aircraft, to wit: (an AH–64 helicopter) (an F–14A fighter) (a KC–135 tanker) (___)] [a vessel, to wit: (the aircraft carrier USS ___) (the Coast Guard Cutter ___) (___)], [while drunk] [while impaired by ___] [while the alcohol concentration in his (blood or breath) equaled or exceeded the applicable limit under subparagraph (b) of the text of the statute in paragraph 35 as shown by chemical analysis] [in a (reckless) (wanton) manner by (attempting to pass another vehicle on a sharp curve) (by ordering that the

aircraft be flown below the authorized altitude)] [and did thereby cause said (vehicle) (aircraft) (vessel) to (strike and) (injure __)].''

(c) A clerical amendment is made to Paragraph 48, Article 123, Forgery, paragraph c.(4) to add the word ''to'' after the word ''liability'' the second time it appears in the fifth sentence.

(d) Paragraph 68b. is added as follows:

''68b. Article 134—(Child pornography)

a. *Text. See* paragraph 60.

b. *Elements.*

(1) *Possessing, receiving, or viewing child pornography.*

(a) That the accused knowingly and wrongfully possessed, received or viewed child pornography; and

(b) That under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) *Possessing child pornography with intent to distribute.*

(a) That the accused knowingly and wrongfully possessed child pornography;

(b) That the possession was with the intent to distribute; and

(c) That under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(3) *Distributing child pornography.*

(a) That the accused knowingly and wrongfully distributed child pornography to another; and

(b) That under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(4) *Producing child pornography.*

(a) That the accused knowingly and wrongfully produced child pornography; and

(b) That under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) It is not a defense to any offense under this paragraph that the minor depicted was not an actual person or did not actually exist.

(2) An accused may not be convicted of possessing, receiving, viewing, distributing, or producing child pornography, if he was not aware of the contraband nature of the visual depictions. Awareness may be inferred from circumstantial evidence such as the name of a computer file.

(3) ''Child Pornography'' means any visual depiction of a minor, or what appears to be a minor, engaging in sexually explicit conduct.

(4) ''Distributing'' means delivering to the actual or constructive possession of another.

(5) ''Minor'' means any person under the age of 18 years;

(6) ''Possessing'' means exercising control of something. Possession may be direct physical custody like holding an item in one's hand, or it may be constructive, as in the case of a person who hides something in a locker or a car to which that person may return to retrieve it. Possession must be knowing and conscious. Possession inherently includes the power or authority to preclude control by others. It is possible for more than one person to possess an item simultaneously, as when several people share control over an item.

(7) ''Producing'' means creating or manufacturing. As used in this paragraph, it refers to making child pornography that did not previously exist. It does not include reproducing or copying.

(8) ''Sexually explicit conduct'' means actual or simulated:

(a) Sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(b) Bestiality;

(c) Masturbation;

(d) Sadistic or masochistic abuse; or

(e) Lascivious exhibition of the genitals or pubic area of any person.

(9) ''Visual depiction'' includes undeveloped film and videotape, and data stored on a computer disk or by electronic means which is capable of conversion into a visual image, and also includes any photograph, film, video, picture, digital image or picture, or computer image or picture, whether made or produced by electronic, mechanical, or other means.

(10) Affirmative defenses.

It shall be an affirmative defense to a charge of possessing child pornography that the accused promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any such visual depiction:

(a) Took reasonable steps to destroy each such visual depiction; or

(b) Reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

(11) On motion of the government, in any prosecution under this paragraph, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography or visual depiction or copy thereof shall not be admissible and may be redacted from any otherwise admissible evidence, and the panel shall be instructed, upon request of the Government, that it can draw no inference from the absence of such evidence.

d. *Lesser included offenses.*

(1) *Possessing, receiving, or viewing child pornography.*

Article 80—attempts.

(2) *Possessing child pornography with intent to distribute.*

Article 80—attempts.

Article 134—possessing child pornography.

(3) *Distributing child pornography.*

Article 80—attempts.

Article 134—possessing child pornography.

Article 134—possessing child pornography with intent to distribute.

(4) *Producing child pornography.*

Article 80—attempts.

Article 134—possessing child pornography.

e. *Maximum punishment.*

(1) *Possessing, receiving or viewing child pornography.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(2) *Possessing child pornography with intent to distribute.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

(3) *Distributing child pornography.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(4) *Producing child pornography.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 30 years.

f. *Sample specification.*

Possessing, receiving, viewing, possessing with intent to distribute, distributing or producing child pornography.

In that ____ (personal jurisdiction data), did, at ____, on or about ____ 20__, knowingly and wrongfully (possess) (receive) (view) (distribute) (produce) child pornography, to wit: a (photograph) (video) (film) (picture) (digital image) (computer image) of a minor, or what appears to be a minor, engaging in sexually explicit conduct, (with intent to distribute the said child pornography).''

Section. 3. These amendments shall take effect 30 days from the date of this order.

(a) Nothing in these amendments shall be construed to make punishable any act done or omitted prior to the effective date of this order that was not punishable when done or omitted.

(b) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceedings, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to the effective date of this order, and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

The White House

Changes to the Discussion accompanying the Manual for Courts Martial, United States

(a) A clerical amendment is made to the first paragraph of the Discussion following R.C.M. 1107(d)(1) to correctly reference R.C.M. 1003(b)(5) and (6) instead of R.C.M. 1003(b)(6) and (7).

Dated: September 14, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–22405 Filed 9–16–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Meeting

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board will meet in closed session on October 28–29, 2009 to discuss interim finding and recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture and homeland security.

DATES: The meeting will be held October 28–29, 2009, and is closed to the public.

ADDRESSES: The meeting will be held at the Pentagon, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Rose, Executive Officer, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *debra.rose@osd.mil*, or via phone at (703) 571–0084.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology and Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Board will discuss interim finding and recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U. S. national defense posture and homeland security.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2) and 41 CFR 102–3.155, the Department of Defense has determined that the Defense Science Board meeting will be closed to the public. Specifically, the Under Secretary of Defense (Acquisition, Technology and Logistics), with the coordination of the DoD Office of General Counsel, has determined in writing that all sessions of these meetings will be closed to the public because they will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(1).

Written Statements:

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official (see **FOR FURTHER INFORMATION CONTACT**), at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

Dated: September 14, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–22400 Filed 9–16–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Department of Defense Wage Committee

AGENCY: Civilian Personnel Management Service (Wage and Salary Division), DoD.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of section 10[d] of the Federal Advisory Committee Act of 1972, Public Law 92–463, it is hereby determined that every Wage Committee meeting concerns matters listed in 5 U.S.C. 552b[c][2] and 5 U.S.C. 552b[c][4], and that, accordingly, the meeting will be closed to the public. The DoD announces that the Department of Defense Wage Committee will meet in September, October, November and December 2009.

DATES: A meeting will convene at 10 a.m. on September 22, 2009. Additional meetings will be held on October 6 and 20, November 3 and 17, and December 1, 15, and 29, 2009.

ADDRESSES: The meetings will be held at 1400 Key Boulevard, Level A, Room A101, Rosslyn, Virginia 22209–5144.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Jerabek, Designated Federal Officer for the Department of Defense Wage Committee, 1400 Key Boulevard, Suite A105, Arlington, Virginia 22209–5144, *Telephone:* (703) 696–1735, Fax: (703) 696–5472, *E-mail: craig.jerabek@cpms.osd.mil*.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting:

The Committee will receive, review, and consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

The Department of Defense Wage and Salary Division was unable to finalize its agenda in time to publish notice of its September 22, 2009, meeting in the **Federal Register** for the 15-calendar days required by 41 CFR 102–3.150(a). In order to meet legal effective dates, the meeting date cannot be changed. Accordingly, the Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Written Statements:

Members of the public are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing

to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: September 14, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–22401 Filed 9–16–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Notice of Class Deviation Approval

AGENCY: National Energy Technology Laboratory, Department of Energy.

ACTION: Notice of class deviation approval.

SUMMARY: This notice announces the approval of a Class Deviation to the regulations at 10 CFR part 600. The Department is publicizing notice of the Class Deviation approval to satisfy the requirements of 10 CFR 600.4(d). The effect of this action is that the Department may require the submission of monthly performance reports on projects selected under the Clean Coal Power Initiative—Round 3 Funding Opportunity Announcement.

FOR FURTHER INFORMATION CONTACT: Brittley Robbins at (412) 386–5430.

SUPPLEMENTARY INFORMATION: Under the relevant Subparts of the Department of Energy's Financial Assistance Regulations, which prescribe performance reporting, 10 CFR 600.151, 240, and 341, reporting shall not be required more frequently than quarterly or less frequently than annually. For projects selected under the Clean Coal Power Initiative—Round 3 (CCPI–3) Funding Opportunity Announcement, the Department determined that quarterly reporting was insufficient to adequately monitor progress and assess risk as they do not provide current information, and do not allow the Department to identify and address problems in a timely manner. Projects selected under the CCPI–3 Announcement will be commercial scale demonstration projects which are inherently complex, integrating novel carbon capture technology into commercial operations of a coal-fired power generation facility, which will in turn be integrated with a large-scale sequestration facility. All demonstration projects under the Clean Coal Power Initiative Program carry an inherent degree of risk because they incorporate innovative technology, either being introduced for the first time or in an untried configuration at the commercial scale.

To ensure that cooperative agreements awarded under the Clean Coal Power Initiative—Round 3 Funding Opportunity Announcement meet their objectives on schedule and within budget, the Department pursued a Class Deviation from the regulations at 10 CFR 600.151, 240, and 341 to allow for monthly performance reporting.

On April 8, 2008, the Office of Management and Budget approved the Department's request for the Class Deviation.

Issued in Pittsburgh, PA on September 10, 2009.

Raymond D. Johnson,

Contracting Officer.

[FR Doc. E9–22385 Filed 9–16–09; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0447; FRL–8958–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999 (Renewal), EPA ICR Number 1901.04, OMB Control Number 2060–0424

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before October 19, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0447, to (1) EPA online using *www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Rebecca Kane, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–5960; *fax number:* (202) 564–0050; *e-mail address: kane.rebecca@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2009 (74 *FR* 32580), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0447, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NSPS for Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units

Constructed on or Before August 30, 1999 (Renewal).

ICR Numbers: EPA ICR Number 1901.04, OMB Control Number 2060–0424.

ICR Status: This ICR is scheduled to expire on October 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: These emission guidelines apply to small municipal waste combustors (MWCs) constructed on or before August 30, 1999, that combust greater than 35 tons per day (tpd) but less than 250 tpd of municipal solid waste. The emission guidelines regulate organics (dioxin/furans), metals (cadmium, lead, mercury, and particulate matter), and acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides). The emission guidelines require initial reports, semiannual reports, and annual reports. Owners or operators also are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility or any period during which the monitoring system is inoperative. Owners or operators subject to these regulations are required to maintain records of measurements and reports for at least five years.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,709 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Small Municipal Waste Combustors.

Estimated Number of Respondents: 23.

Frequency of Response: Initially, semiannually, annually, and on occasion.

Estimated Total Annual Hour Burden: 100,854.

Estimated Total Annual Cost: $9,578,726, which is comprised of $8,541,926 in labor costs, operation and maintenance costs of $1,036,800, and no capital/start-up costs.

Changes in the Estimates: There is no change to the hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. Since there are no changes in the regulatory requirements and there is no significant industry growth, the labor hours and cost figures used in the previous ICR are also used in this ICR.

Dated: September 10, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–22412 Filed 9–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0389; FRL–8958–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Metal Furniture Coating (Renewal); EPA ICR Number 0649.10, OMB Control Number 2060–0106

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before October 19, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0389, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Office of Enforcement and Compliance Assurance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* 202–564–6369; *fax number:* 202–564–0050; *e-mail address: lazarus.leonard@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2009 (74 FR 32580) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0389, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*,

as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NSPS for Metal Furniture Coating (Renewal).

ICR Numbers: EPA ICR Number 0649.10, OMB Control Number 2060–0106.

ICR Status: This ICR is scheduled to expire on October 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Respondents are owners or operators of metal furniture surface coating facilities. These standards apply to each metal furniture surface coating operation in which organic coatings are applied (greater than 3,842 liters of coating per year), commencing construction, modification or reconstruction after November 28, 1980. Volatile Organic Compounds (VOCs) are the pollutants regulated under this subpart.

Owners or operators of the affected facilities described must make initial reports when a source becomes subject to the standards, conduct and report on a performance test, demonstrate and report on continuous monitor performance, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to New Source Performance Standards (NSPS).

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 58 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of metal furniture surface coating facilities.

Estimated Number of Respondents: 400.

Frequency of Response: Semiannually, on Occasion, initially.

Estimated Total Annual Hour Burden: 56,074.

Estimated Total Annual Cost: $5,589,248, which includes $4,749,248 in labor costs, $840,000 in annualized O&M costs, and no capital/startup costs.

Changes in the Estimates: There is no change in the burden hours or cost to the respondents in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the respondents is very low, negative or nonexistent. Therefore, the labor hours and cost figures in the previous ICR reflect the current burden to the respondents and are reiterated in this ICR.

Dated: September 11, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–22428 Filed 9–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0379; FRL–8958–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Beverage Can Surface Coating (Renewal); EPA ICR Number 0663.09, OMB Control Number 2060–0001

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before October 19, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0379, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Office of Enforcement and Compliance Assurance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* 202–564–6369; *fax number:* 202–564–0050; *e-mail address: lazarus.leonard@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2009 (74 FR 32580) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0379, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NSPS for Beverage Can Surface Coating (Renewal).

ICR Numbers: EPA ICR Number 0663.10, OMB Control Number 2060–0001.

ICR Status: This ICR is scheduled to expire on October 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Respondents are owners or operators of beverage can surface coating facilities. These standards apply to each beverage can surface coating operation in which organic coatings are applied (exterior base coat operations, over varnish coating operations, and inside spray coating operations) that commenced construction, modification or reconstruction after November 26, 1980. Owners or operators of the affected facilities described must make initial reports when a source becomes subject to the standards, conduct and report on a performance test, demonstrate and report on continuous monitor performance, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to New Source Performance Standards (NSPS).

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 43 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of beverage can surface coating facilities.

Estimated Number of Respondents: 48.

Frequency of Response: Semiannually, On Occasion, Initially.

Estimated Total Annual Hour Burden: 5,134.

Estimated Total Annual Cost: $515,230—which includes $414,430 in labor costs, $100,800 in annual Operation and Maintenance (O&M) costs, and no capital/startup costs.

Changes in the Estimates: There is no change in the burden hours or cost to the respondents in this ICR compared to the previous ICR. This is due to two considerations:

(1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the respondents is very low, negative or nonexistent. Therefore, the labor hours and cost figures in the previous ICR reflect the current burden to the respondents and are reiterated in this ICR. It should be noted that there is a minor correction of $200 to the O&M costs due to rounding errors in the previous ICR.

Dated: September 11, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–22427 Filed 9–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8956–3]

Notice of Availability of ''Award of Special Appropriations Act Project Grants Authorized by the Agency's FY 2009 Appropriations Act''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: EPA is announcing the availability of a memorandum entitled ''Award of Special Appropriations Act Project Grants Authorized by the Agency's FY 2009 Appropriations Act.'' This memorandum provides information and guidelines on how EPA will award and administer grants for the special projects identified in the State and Tribal Assistance Grants (STAG) account of the Agency's FY 2009 Appropriations Act (Pub. L. 111–8). The STAG account provides budget authority for funding identified water, wastewater and groundwater infrastructure projects. Each grant recipient will receive a copy of this document from EPA.

ADDRESSES: The subject memorandum may be viewed and downloaded from EPA's homepage, *http://www.epa.gov/owm/cwfinance/cwsrf/law.htm.*

FOR FURTHER INFORMATION CONTACT: George Ames, (202) 564–0661 or *ames.george@epa.gov.*

Dated: September 4, 2009.

Sara Hisel-McCoy,

Acting Deputy Director, Office of Wastewater Management.

[FR Doc. E9–22430 Filed 9–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8957–7]

Children's Health Protection Advisory Committee (CHPAC); Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Charter Renewal.

Notice is hereby given that the Environmental Protection Agency (EPA) has determined that, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The Children's Health Protection Advisory Committee (CHPAC) is a necessary committee which is in the public interest. Accordingly, CHPAC will be renewed for an additional two-year period. The purpose of CHPAC is to provide advice and recommendations to the Administrator of EPA on issues associated with development of regulations, guidance and policies to address children's health risks.

Inquiries may be directed to Carolyn Hubbard, Designated Federal Officer, CHPAC, U.S. EPA, OCHP MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. *Hubbard.carolyn@epa.gov*, 202–564–2189.

Dated: September 11, 2009.

Martha Shimkin,

Division Director, Office of Children's Health Protection, and Environmental Education, Child and Aging, Health Protection Division.

[FR Doc. E9–22320 Filed 9–16–09; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8955–4]

Clean Water Act Section 303(d): Preliminary Notice of Total Maximum Daily Load (TMDL) Development for the Chesapeake Bay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and initial request for public input.

SUMMARY: This notice announces the intent of EPA to establish a Chesapeake Bay-wide Total Maximum Daily Load (TMDL) for nutrients and sediment for all impaired segments in the tidal portion of the Chesapeake Bay watershed. This action is being taken pursuant to section 303(d) of the Clean Water Act (CWA). To provide information to the public regarding the process, approach and implications of this action, EPA will hold a series of public meetings in late 2009 on dates and in locations to be determined. A second public comment period will be held in the summer of 2010 once a draft Chesapeake Bay TMDL is developed. This TMDL is being developed consistent with the requirements of two Consent Decrees settling the following lawsuits: *American Canoe Association, Inc. and the American Littoral Society* v. *EPA,* Civil No. 98–979–A (E.D. Va) and *Kingman Park Civic Association, et al.* v. *U.S. Environmental Protection Agency, et al.,* No. 1:98CV00758 (D.D.C.). By this notice, EPA is soliciting preliminary input from the public on its plans for developing this Chesapeake Bay TMDL. EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the development and calculation of the Chesapeake Bay TMDL by December 18, 2009. EPA will review all data and information submitted during the public comment period and will consider them in the development of the TMDL as appropriate.

DATES: Comments must be submitted in writing to EPA on or before December 18, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments on the development of the Chesapeake Bay TMDL by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *sincock.jennifer@epa.gov.* To submit your comments by U.S. mail, mark them to the attention of Jennifer Sincock, Environmental Scientist, Water Protection Division, (3WP30), U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Further information on the development of the Chesapeake Bay TMDL may be viewed at *http://www.epa.gov/chesapeakebaytmdl*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Jennifer Sincock at (215) 814–5766 or fax 215–814–2318 or send an e-mail to *sincock.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 303(d) of the CWA requires that each State identify those waters within its boundaries for which existing technology-based pollution controls required by the CWA are not stringent enough to attain or maintain State water quality standards. States are required to establish TMDLs for those ''impaired'' waters. TMDLs are pollution budgets designed to identify necessary reductions of pollutant loads to the impaired waters so that the appropriate water quality standards are met, including designated uses like fishing or swimming and water quality criteria for parameters such as dissolved oxygen and water clarity.

Why is a TMDL being developed for the Chesapeake Bay? The Chesapeake Bay is a national treasure constituting the largest estuary in the United States and one of the largest and most biologically productive estuaries in the world. Despite significant efforts by Federal, State, and local governments and other interested parties, water pollution in the Chesapeake Bay prevents the attainment of existing State water quality standards. The pollutants that are largely responsible for impairment of the Chesapeake Bay are nutrients, in the form of nitrogen and phosphorus, and sediment. EPA, in coordination with the Bay watershed jurisdictions of Maryland, Virginia, Pennsylvania, Delaware, West Virginia, New York and the District of Columbia, will establish a nutrient and sediment pollution budget for the Bay consistent with CWA requirements to guide and assist Chesapeake Bay restoration efforts. A primary driver for the schedule to develop the Chesapeake Bay TMDL is the Virginia TMDL Consent Decree settling the lawsuit *American Canoe Association, Inc. and the American Littoral Society* v. *EPA,* Civil No. 98–979–A (E.D. Va). Portions of the Chesapeake Bay and its tidal tributaries were identified as impaired for aquatic life uses and exceedance of the numeric criteria for dissolved oxygen caused by nutrient and sediment pollutants on Virginia's 1998 section 303(d) list of impaired waters. Other Bay and tidal tributary segments impaired by nutrients and sediment have been identified on Maryland and the District of Columbia section 303(d) lists. Under the Virginia TMDL Consent Decree, EPA is obligated to establish a TMDL for the Bay's waters identified on the 1998 Virginia list including those aquatic life use impairments caused by the nutrient and sediment pollutants by no later than May 1, 2011, if those waters are not previously removed from the list or if

Virginia has not already developed a TMDL for those waters. EPA must establish a TMDL covering the listed Virginia Bay tidal waters by May 1, 2011 because the Virginia segments of the Chesapeake Bay and its tidal tributaries remain on Virginia's 2008 section 303(d) list. Virginia has requested that EPA establish the TMDL for those waters pursuant to the Virginia Consent Decree schedule.

In addition to the Virginia segments identified above, the Potomac River is listed on the District of Columbia's section 303(d) impaired waters list for low pH. The water quality standards exceedances for pH in the Potomac River are the result of algal impacts from excess nutrients. Establishment of a Potomac River pH TMDL is directly linked to the establishment of the Chesapeake Bay TMDL because of their common impairing pollutants (nutrients) and hydrologic connection. Like Virginia, EPA is under a consent decree obligation to establish a pH TMDL for the Potomac by May 1, 2011 if the District of Columbia does not develop that TMDL (*Kingman Park Civic Association, et al.* v. *U.S. Environmental Protection Agency, et al.,* No. 1:98CV00758 (D.D.C.)). Like Virginia, DC has asked EPA to establish the Potomac River pH TMDL. Finally, Maryland has also requested that EPA develop TMDLs on the same schedule to address Maryland Bay and tidal tributary waters identified on its current section 303(d) list as impaired for aquatic life uses caused by nutrient and sediment pollutants.

When will the Chesapeake Bay TMDL be completed? The Chesapeake Bay Program's Principals' Staff Committee has requested an accelerated schedule for EPA to complete the Chesapeake Bay TMDL by December 31, 2010. EPA will undertake its best efforts to issue a final Chesapeake Bay TMDL for nutrients and or sediment by this date. In June 2010, EPA intends to propose a draft Chesapeake Bay TMDL for public review and comment. EPA intends to collect public comments on the draft TMDL between June and September 2010. EPA will undertake its best efforts to establish the final TMDL by December 31, 2010 and no later than May 1, 2011.

Who is developing the Bay TMDL? EPA Region III Water Protection Division has assumed primary responsibility for the establishment of the Bay TMDL, pursuant to the two Consent Decrees discussed above, and at the request of the six Chesapeake Bay watershed States (Virginia, Maryland, Delaware, West Virginia, Pennsylvania, and New York) and the District of Columbia. The Chesapeake Bay Program Office in EPA Region III has modeling and water quality expertise that is critical to the TMDL development process. EPA Region II is also providing guidance and technical support to Region III and will cosign the final TMDL because New York State is included in the Chesapeake Bay watershed, and sources in New York State (like the other States) contribute nutrients and sediment to the Bay. The Chesapeake Bay Program committee structure is being used to engage the watershed States fully in the development of the TMDL. EPA is working through the Chesapeake Bay Water Quality Goal Implementation Team (formerly the Water Quality Steering Committee and Nutrient Subcommittee), which is comprised of all Bay jurisdictions including Virginia, Maryland, the District of Columbia, Delaware, Pennsylvania, West Virginia, and New York; the Chesapeake Bay Commission; and EPA Regions II and III, to inform EPA's TMDL decisions and attempt to reach consensus on the TMDL's targets and goals. Major policy decisions are made by the Chesapeake Bay Program Principals' Staff Committee (Bay State and District of Columbia Secretaries, the Chesapeake Bay Commission, and the EPA Region III Regional Administrator) and Executive Council (Bay State Governors, Mayor of District of Columbia, the Chesapeake Bay Commission, and the EPA Administrator). Where consensus cannot be reached on key decision points, EPA has the ultimate responsibility to make the final decisions.

What is the scope of the Bay TMDL? EPA expects the Chesapeake Bay TMDL to address all segments of the Chesapeake Bay and its tidal tributaries that are identified on the Bay States' 2008 section 303(d) lists of impaired waters as impaired by nitrogen, phosphorus and sediment. EPA estimates that the Bay TMDL will address up to 92 impaired Bay and tidal tributary segments, and therefore will consist of up to 92 TMDLs—one for each impaired segment. EPA intends that the Bay TMDL will be established at a level necessary to ensure attainment of water quality standards in each of these impaired segments. EPA also expects that the TMDL will identify the aggregate watershed pollutant loading cap for nitrogen, phosphorus and sediment necessary to achieve the Chesapeake Bay's water quality standards. This aggregate watershed loading cap would be subdivided among the Bay States and major tributary basins. In addition, individual and (as appropriate) aggregate maximum daily allowable point source and nonpoint source loadings, called wasteload allocations (WLAs) and load allocations (LAs), respectively, would be identified across all jurisdictions within the Bay watershed. When completed, the Chesapeake Bay TMDL will be the largest, most complex TMDL in the country, covering a 64,000 square mile area in six States and the District of Columbia.

How will the TMDL promote nitrogen, phosphorus and sediment reductions? Under the CWA, the TMDL will establish the watershed pollution budget for nutrients and sediment necessary to meet water quality standards in the Bay. Other provisions of the CWA are intended to implement the TMDL.

Most notable of these provisions is the National Pollutant Discharge Elimination System (NPDES) permit program. Under this program, permits are issued to point sources. These are sources discharging to waterbodies through a pipe or other discrete conveyance. Examples include municipal wastewater treatment plants, industrial facilities, municipal stormwater systems, and combined animal feeding operations. NPDES permits for these point sources contain effluent limits that control the amount of nutrients and sediment allowed in their discharge. Under the CWA, these permit effluent limits must be written consistent with the assumptions and requirements of the wasteload allocations in an EPA-approved TMDL. 40 CFR 122.44 (d)(1)(vii)(B).

Under the CWA, nonpoint sources (any source that is not a point source, e.g., certain agricultural and other unchanneled stormwater runoff) are generally not regulated under the NPDES permit program. Instead, pollutant controls for nonpoint sources are promoted through Federal grant programs like CWA section 319. In addition to the CWA section 319 grant program, there are other Federal assistance programs such as the Environmental Quality Incentives Program (EQIP) provided through the U.S. Department of Agriculture. Each State also has a variety of regulatory and non-regulatory programs that provide important measures or incentives to control nonpoint sources of pollution. Because EPA's ability under the CWA to influence nonpoint source pollutant reductions solely through grant-related programs is not expected to fully address nonpoint source reduction needs, EPA is working with our partner jurisdictions to develop innovative

approaches to achieving nonpoint source reductions of nutrients and sediment.

During TMDL development, EPA will work with its partner States and the District of Columbia to develop individual Watershed Implementation Plans (WIPs) and an overall TMDL implementation framework. Those plans and framework would be part of the TMDL Record of Decision and help provide reasonable assurance that the necessary nutrient and sediment reductions from point and nonpoint sources identified in the TMDL will be achieved. The WIPs will identify specific nutrient and sediment reduction targets by geographic location and sector to achieve allowable loadings, as well as a description and schedule of actions that the States, DC, and local decision-makers will take to achieve these reductions. Informed by the TMDL, EPA, the States and the District of Columbia will also provide two-year milestone commitments specifying what source controls will be taken to reduce nitrogen, phosphorus and sediment during that period. EPA is working with the States to develop an adaptive management approach with greater accountability including contingencies and consequences that would be implemented if a State or the District does not achieve its two-year milestone commitments or the TMDL's nutrient and sediment reduction and implementation targets.

In May 2009, the Chesapeake Bay Program's Executive Council set new short-term goals to reduce pollution to the Bay and dramatically accelerate the pace of restoration in the Bay and its rivers. Instead of pursuing a distant deadline, the seven Bay jurisdictions will now focus on shorter, two-year milestones. The first sets of milestones, announced at the Executive Council meeting, are scheduled to be met by December 31, 2011. By meeting these and future milestones, the Bay jurisdictions expect to put in place all pollution control measures necessary for a restored Bay no later than 2025.

On May 12, 2009, President Obama signed an Executive Order entitled ''Chesapeake Bay Protection and Restoration.'' The Executive Order calls on the Federal government to take a leadership role in protecting and restoring the Bay. Pursuant to the Order, a number of Federal agencies, including EPA, are developing reports making recommendations to the President for restoring the Bay, including achieving its water quality standards. Draft reports are to be submitted to the Federal Leadership Committee, chaired by EPA, by mid-September 2009. The Federal Leadership Committee will then integrate these agency reports into a draft Strategy for coordinated implementation of Federal efforts to restore and protect the Bay. That draft Strategy will be published for public comment in November 2009 and released as a final document in May 2010. EPA expects to integrate the Bay TMDL fully into the set of recommendations it proposes pursuant to the Executive Order.

Paperwork Reduction Act: The Office of Management and Budget (OMB) has previously approved the information collection requirements for developing TMDLs pursuant to section 303(d) of the CWA under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0071. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

EPA Seeks Preliminary Comment on the Development of a Nutrient and Sediment TMDL for the Chesapeake Bay

By this notice, EPA is seeking preliminary comment on the development of a TMDL for phosphorus, nitrogen, and sediment in the impaired tidal segments of the Chesapeake Bay. Further information on the Chesapeake Bay TMDL development may be viewed at *http://www.epa.gov/chesapeakebaytmdl*.

EPA will hold a series of public meetings between November and December 2009 to provide information and to solicit input from the public on the preliminary development of this nutrient and sediment TMDL for the Chesapeake Bay. EPA intends to hold a second public comment period between June and September 2010 after the draft Chesapeake Bay TMDL is published.

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the development and calculation of the Chesapeake Bay TMDL by December 18, 2009. EPA will review all data and information submitted during the public comment period and will incorporate it into the TMDL as appropriate.

EPA also requests that the public provide any additional information and comment regarding the design and establishment of the Chesapeake Bay TMDL and accompanying implementation plans so that EPA can incorporate these ideas into the TMDL development process.

Dated: August 31, 2009.

Tai-Ming Chang,

Acting Director, Water Protection Division, Region III.

[FR Doc. E9–22410 Filed 9–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2009–0645; FRL–8953–7]

Notice of Availability of the External Peer Review Draft of Using Probabilistic Methods To Enhance the Role of Risk Analysis in Decision-Making With Case Study Examples: Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability for public comment; correction.

SUMMARY: The U.S. Environmental Protection Agency (EPA) published a document in the **Federal Register** of August 18, 2009 (74 FR 41695), concerning notification of availability for public comment of two external review draft documents ''Using Probabilistic Methods to Enhance the Role of Risk Analysis in Decision-Making With Case Study Examples,'' and the ''Managers' Summary'' of the same document. The document contained an incorrect date for peer review, an incorrect EPA Docket number, and incorrect contact information. This correction notice also announces that the public comment period is being extended from 15 to 60 days, and that the peer review meeting is being modified from a letter peer review by closed teleconference to a publicly held external peer review meeting.

DATES: All comments received by October 16, 2009 will be shared with the external peer review panel for their consideration. Comments received beyond that time may be considered by EPA when it finalizes the documents.

FOR FURTHER INFORMATION CONTACT: Dr. Kathryn Gallagher, Risk Assessment Forum, Mail Code 8105R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–1398; *fax number:* (202) 564–2070, *E-mail: gallagher.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 18, 2009, in FR Doc. E9–19755 on pages 41695 to 41696, the following corrections are made:

On page 41695, in the first column, correct the public comment period text to indicate that the public comment period is being extended from 15 days to 60 days: The U.S. Environmental Protection Agency (EPA) is announcing a 60-day public comment period for the external peer review draft of ''Using Probabilistic Methods to Enhance the Role of Risk Analysis in Decision-Making With Case Study Examples,'' a white paper, and the ''Managers' Summary'' of the same document. All comments received by the closing date of October 16, 2009 will be shared with the external peer review panel for their consideration.

On page 41695, in the third column, correct the ''**DATES**'' caption to indicate that the public comment period is being extended to 60 days:

DATES: All comments received by October 16, 2009 will be shared with the external peer review panel for their consideration. Comments received beyond that time may be considered by EPA when it finalizes the documents.

On page 41695, in the third column, correct the text to indicate that the peer review is being changed from letter and closed teleconference in the May 2009 time frame to a publicly held external peer review meeting in the Fall 2009 time frame:

The document will undergo independent peer review during an expert peer review meeting, which will be convened, organized and conducted by an EPA contractor in the Fall 2009 time frame. The external peer review meeting will be publicly held, all public comments received in the docket will shared with the peer reviewers, and members of the public will also be invited to give oral or provide written comments at the meeting regarding the draft document under review. The date of the external peer review meeting will be announced in a subsequent **Federal Register** notice.

On page 41695, in the second column, as well as other locations in the text identifying the docket number, correct the text to read:

The panel may consider public comments received in the official public docket for this activity under docket ID number EPA–HQ–ORD–2009–0645.

On page 41695 in the third column, and page 41696, in the first column, correct the contact information to read:

FOR FURTHER INFORMATION CONTACT: Dr. Kathryn Gallagher, Risk Assessment Forum, Mail Code 8105R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–1398; *fax number:* (202) 564–2070, *E-mail: gallagher.kathryn@epa.gov*.

Dated: September 1, 2009.

Kevin Teichman, PhD,

Acting EPA Science Advisor.

[FR Doc. E9–22411 Filed 9–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0703; FRL–8438–2]

Pesticide Program Dialogue Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, EPA gives notice of a public meeting of the Pesticide Program Dialogue Committee (PPDC) on October 14–15, 2009. A draft agenda is under development that will include reports from and discussions about current issues from the following PPDC work groups: Work Group on 21st Century Toxicology/New Integrated Testing Strategies; Work Group on Web-Distributed Labeling; and Work Group on Comparative Safety Statements for Pesticide Product Labeling. Discussion topics will also cover NPDES permit issues regarding pesticides; and current Endangered Species Act issues. Several PPDC work group meetings are scheduled in September and October 2009, and are open to the public. These include the PPDC PRIA Process Improvements Work Group meeting on October 1, 2009, and meetings of each of the above-mentioned three PPDC work groups on October 13, 2009, and other listed dates. A webcast covering NPDES issues in preparation for the PPDC meeting is being scheduled for October 7, 2009. Information about all of these meetings can be found on EPA's website at: *http://www.epa.gov/pesticides/ppdc.*

DATES: The PPDC meeting will be held on Wednesday, October 14, 2009, from 9 a.m. to 5:30 p.m., and Thursday, October 15, 2009, from 9 a.m. to 12:15 p.m.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held in the Conference Center on the lobby level at EPA's location at 1 Potomac Yard South, 2777 S. Crystal Drive, Arlington, VA. This location is approximately one mile from the Crystal City Metro Station.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Office of Pesticide Programs (7501P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–4775; fax number: (703) 308–4776; e-mail address: *fehrenbach.margie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to persons who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996; and the Pesticide Registration Improvement Act. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0703. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

A draft agenda is being developed and will be posted by September 25, 2009, on EPA's website at: *http://www.epa.gov/pesticides/ppdc.*

II. Background

EPA's Office of Pesticide Programs (OPP) is entrusted with the responsibility to help ensure the safety of the American food supply, the education and protection from unreasonable risk of those who apply or are exposed to pesticides occupationally or through use of products, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

The Charter for the EPA's PPDC was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in September 1995, and has been renewed every 2 years since that time. PPDC's Charter was renewed November 2, 2007, for another 2–year period. The purpose of PPDC is to provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides. It is determined that PPDC is in the public interest in connection with the performance of duties imposed on the Agency by law. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest, consumer, and animal rights groups; farm worker organizations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations.

Copies of the PPDC Charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

III. How Can I Request to Participate in this Meeting?

PPDC meetings are open to the public and seating is available on a first-come basis. Persons interested in attending do not need to register in advance of the meeting. Comments may be made during the public comment session of each meeting or in writing to the address listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Agricultural workers, Agriculture, Chemicals, Endangered Species, Foods, Pesticide labels, Pesticides and pests, Public health.

Dated: September 11, 2009.

Steve Bradbury,

Acting Director, Office of Pesticide Programs.

[FR Doc. E9–22424 Filed 9–16–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8958–5]

Clean Air Act Advisory Committee (CAAAC): Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical, scientific, and enforcement policy issues.

DATES AND ADDRESSES: Open meeting notice; Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold their next open meeting on Wednesday October 7, 2009 from 8 a.m. to 4:30 p.m. at the Crowne Plaza Washington National Airport, located at 1480 Crystal Drive, Arlington, VA 22202. Seating will be available on a first come, first served basis. The Economic Incentives and Regulatory Innovations subcommittee will meet on Tuesday October 6, 2009 from 9:30 a.m. to 12 p.m. The Permits, New Source Reviews and Toxics subcommittee will meet on Tuesday October 6, 2009 from approximately 12:45 p.m. to 4:30 p.m. The meetings will be held at the Crowne Plaza Washington National Airport, located at 1480 Crystal Drive, Arlington, VA 22202. The Mobile Sources Technical Review subcommittee (MSTRS) will hold a meeting Tuesday October 6, 2009 from 9 a.m. to 5 p.m. with registration beginning at 8:30 a.m. The meeting will be held at the Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, VA 22201. A separate Federal Register has been created for that meeting. The agenda for the CAAAC full committee meeting on May 14, 2009 will be posted on the Clean Air Act Advisory Committee Web site at *http://www.epa.gov/oar/caaac/.*

Inspection of Committee Documents: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket OAR–2004–0075. The Docket office can be reached by e-mail at: *a-and-r-Docket@epa.gov* or FAX: 202–566–9744.

FOR FURTHER INFORMATION CONTACT: Concerning the CAAAC, please contact Pat Childers, Office of Air and Radiation, U.S. EPA (202) 564–1082, FAX (202) 564–1352 or by mail at U.S. EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. For information on the subcommittees, please contact the following individuals: (1) Permits/NSR/Toxics—Liz Naess, (919) 541–1892; and (2) Economic Incentives and Regulatory Innovations—Carey Fitzmaurice, (202) 564–1667 (3) Mobile Source Technical Review—John Guy, (202) 343–9276 Additional Information on these meetings, CAAAC, and its Subcommittees can be found on the CAAAC Web site: *http://www.epa.gov/oar/caaac/.*

For information on access or services for individuals with disabilities, please contact Mr. Pat Childers at (202) 564–1082 or *childers.pat@epa.gov.* To request accommodation of a disability, please contact Mr. Childers, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 10, 2009.

Pat Childers,

Designated Federal Official, Clean Air Act Advisory Committee, Office of Air and Radiation.

[FR Doc. E9–22413 Filed 9–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8956–6]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Canaan Valley Public Service District, WV

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Acting Regional Administrator of EPA Region 3 is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Canaan Valley Public Service District (CVPSD) for the purchase of membrane filtrations cassettes, which are an integral component of the Membrane Bioreactor (MBR) wastewater treatment process, at two of its Wastewater Treatment Plants (WWTPs). CVPSD indicates that the MBR treatment process is necessary to achieve the wastewater treatment levels required by the National Pollutant Discharge Elimination System (NPDES) permits issued for these WWTPs. The membrane filtration equipment under consideration is manufactured by a company located in Canada and no United States manufacturer produces an alternative that meets the CVPSD's technical specifications. This is a project specific waiver and only applies to the use of the specified product for the ARRA funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on the specific project circumstances. The Acting Regional Administrator is making this determination based on the review and recommendations of the EPA Region III, Water Protection Division, Office of Infrastructure and Assistance. The CVPSD has provided sufficient documentation to support its request.

The Assistant Administrator of the EPA's Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of membrane filtration cassettes for the proposed project being implemented by the CVPSD.

DATES: *Effective Date:* August 27, 2009.

FOR FURTHER INFORMATION CONTACT: Robert Chominski, Deputy Associate Director, (215) 814–2162, or David McAdams, Environmental Engineer, (215) 814–5764, Office of Infrastructure & Assistance (OIA), Water Protection Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(b)(2) of Public Law 111–5, Buy American requirements to the Canaan Valley Public Service District (CVPSD) for the acquisition of membrane filtration cassettes manufactured by GE Water and Process Technologies located in Canada. CVPSD has been unable to find an American made membrane filtration cassette manufacturer to meet its specific wastewater requirements.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States unless a waiver is provided to the recipient by EPA. A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent with public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

CVPSD's waiver request is to allow the purchase of four membrane filtration cassettes for use in improvements to two existing WWTPs in West Virginia. This project will upgrade two of its existing WWTPs by adding a new MBR treatment process. The membrane filtration cassette is an integral component of the MBR treatment process because it separates the treated wastewater from the mixed liquor which comes from the biological reactors, before the treated wastewater is disinfected and discharged. After an engineering analysis of alternate treatment processes, the CVPSD determined MBR to be the most environmentally sound and cost effective solution. The MBR is an advanced waste water treatment process which is designed to meet the high quality effluent requirements of the waste load allocation under the NPDES permit. In addition, in anticipation of procuring the MBR system, the CVPSD has already incorporated specific technical design requirements for installation of membrane filter cassettes with the MBR treatment process at their WWTPs, including specific tankage footprint, geometry and configuration. To require CVPSD to redesign its project would cause an unacceptable delay to the initiation of construction.

The CVPSD has provided information to the EPA demonstrating that there are no membrane filtration cassettes manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet the required technical specification. Four companies were considered for the membrane filtration cassettes, none based in the United States. The CVPSD has performed market research but was unsuccessful in its effort to locate any domestic manufacturers of membrane filtration cassettes for WWTPs.

The April 28, 2009 EPA HQ Memorandum, Implementation of Buy American provisions of P.L. 111–5, the ''American Recovery and Reinvestment Act of 2009'', defines reasonably available quantity as ''the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.'' The CVPSD has incorporated specific technical design requirements for installation of membrane filtration cassettes at its WWTPs.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are ''shovel ready'' by requiring utilities, such as the CVPSD, to revise their standards and specifications, institute a new bidding process, and potentially choose a more costly, less efficient project. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving Fund assistance would result in unreasonable delay and thus displace the ''shovel ready'' status for this project.

To further delay construction is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

Based on additional research conducted by EPA's Office of Infrastructure and Assistance (OIA) in Region 3, and to the best of the Region's knowledge at the time of review, there do not appear to be other membrane filtration cassettes manufactured domestically that would meet the CVPSD's technical specification. EPA's national contractor prepared a technical assessment report dated July 15, 2009 based on the waiver request submitted. The report determined that the waiver request submittal was complete, that adequate technical information was provided, and that there were no significant weaknesses in the justification provided. The report confirmed the waiver applicant's claim that there are no American-made membrane filtration cassettes for use in MBRs in WWTPs.

The OIA has reviewed this waiver request and to the best of our knowledge

at the time of review has determined that the supporting documentation provided by the CVPSD is sufficient to meet the criteria listed under Section 1605(b) and in the April 28, 2009, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' Memorandum:'' Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the CVPSD's technical specifications, a waiver from the Buy American requirement is justified.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the Canaan Valley Public Service District is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of four membrane filtration cassettes using ARRA funds as specified in the CVPSD's request of July 1, 2009. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers ''based on a finding under subsection (b).''

Authority: Pub. L. 111–5, section 1605.

Dated: August 27, 2009.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. E9–22429 Filed 9–16–09; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; Altering a System of Records

AGENCY: Farm Credit Administration.

ACTION: Notice of altering a system of records maintained on individuals; request for comments.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Farm Credit Administration (FCA) is publishing an amended system notice, which indicates that the agency is now maintaining information on employees' health savings accounts.

DATES: *Effective Date:* You may send written comments on or before October 19, 2009. The FCA filed an amended System Report with Congress and the Office of Management and Budget on August 21, 2009. This notice will become effective without further publication on October 27, 2009 unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *reg-comm@fca.gov*.
- *FCA Web site: http://www.fca.gov*. Select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Submitting a Comment.''
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jane Virga, Acting Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov*. Once you are in the Web site, select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted but, for technical reasons, we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT: Jane Virga, Acting Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4019, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: This publication satisfies the requirement of the Privacy Act of 1974 that agencies publish a system of records notice in the **Federal Register** when there is a revision, change, or addition to the system of records. The notice reflects designated points of contact for inquiring about the system, accessing the records, and requesting amendments to the records.

The amended system of records is: FCA–1, Employee Attendance, Leave, and Payroll Records—FCA. As required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, the FCA has sent notice of this proposed system of records to the Office of Management and Budget, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate. The notice is published in its entirety below.

FCA–1

SYSTEM NAME:

Employee Attendance, Leave, and Payroll Records—FCA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090 and field offices listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains paper, electronic, and microfiche files containing payroll-related information for FCA employees reported on a biweekly, year-to-date, and, in some cases, annual basis. It includes the ''Agency Time Tracking System,'' payroll and leave data for each employee including rate and amount of pay, hours worked, tax and retirement deductions, leave bank records, life insurance and health insurance deductions, savings allotments, savings bond and charity deductions, health savings accounts, other financial deductions, mailing addresses, and home addresses. The National Finance Center's U.S. Department of Agriculture Personnel Payroll System provides agency payroll services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

PURPOSES:

We may use information in this record system to prepare payroll, to meet Government payroll recordkeeping

and reporting requirements, prepare reports, and to retrieve and supply payroll and leave information as required for Agency needs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

We may disclose information in this system of records to other Government agencies, commercial or credit organizations, or to prospective employers to verify employment.

We may disclose information in this system of records to Federal, State, and local taxing authorities concerning compensation to employees or to contractors; to the Office of Personnel Management, Department of the Treasury, Department of Labor, and other Federal agencies concerning pay, benefits, and retirement of employees; to Federal employees' health benefits carriers concerning health insurance of employees; to financial organizations concerning employee savings account allotments and net pay to checking accounts; to State human resource offices administering unemployment compensation programs; to educational and training organizations concerning employee qualifications and identity for specific courses; and to heirs, executors, and legal representatives of beneficiaries.

We may disclose information in this system of records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, Federal Parent Locator System (FPLS), and Federal Tax Offset System for use in locating individuals and identifying their income sources, to establish paternity, establish and modify orders of support, and for enforcement actions.

We may disclose information in this system of records to the Office of Child Support Enforcement for release to the Social Security Administration for verifying Social Security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

We may disclose information in this system of records to the Office of Child Support Enforcement for release to the Department of the Treasury to administer the Earned Income Tax Credit Program (section 32, Internal Revenue Code of 1986) and to verify a claim with respect to employment in a tax return.

Additional routine uses are listed in the ''General Statement of Routine Uses.''

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

We may disclose information from this system, under 5 U.S.C. 552a(b)(12), to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, as amended, 31 U.S.C. 3701(a)(3), in accordance with 31 U.S.C. 3711(f).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain records in file folders or on a computerized database.

RETRIEVABILITY:

Retrievable by name or Social Security number.

SAFEGUARDS:

Access is limited to those whose official duties require access. File cabinets and rooms are locked during non-duty hours. Computers are protected by firewalls and passwords.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records schedule requirements.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Management Services, Farm Credit Administration, McLean, VA 22102–5090.

NOTIFICATION PROCEDURE:

Direct all inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies or comes from information supplied by Agency officials. FCA employee on whom the record is maintained. FCA employees who approve the records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: September 11, 2009.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E9–22361 Filed 9–16–09; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Performance Review Board

As required by the Civil Service Reform Act of 1978 (Pub. L. 95–454), Chairman Julius Genachowski appointed the following executives to the Performance Review Board (PRB): Mary Beth Richards, Julius Knapp and Ruth Milkman.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–22404 Filed 9–16–09; 8:45 am]

BILLING CODE 6712–01–P

OFFICE OF GOVERNMENT ETHICS

Proposed Collection; Comment Request for Unmodified Qualified Trust Model Certificates and Model Trust Documents

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics is publishing this first round notice and seeking comment on the twelve executive branch OGE model certificates and model documents for qualified trusts. OGE intends to submit these forms for extension of approval for three years by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OGE is proposing no changes to these forms at this time. As in the past, OGE will notify filers of an update to the privacy information contained in the existing forms, and will post a notification thereof on its Web site.

DATES: Written comments by the public and the agencies on this proposed extension are invited and must be received by November 16, 2009.

ADDRESSES: You may submit comments to OGE on this paperwork notice by any of the following methods:

E-mail: usoge@oge.gov. (Include reference to ''Qualified trust model certificates and model trust documents paperwork comment'' in the subject line of the message).

Fax: 202–482–9237.

Mail, Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201

New York Avenue, NW., Washington, DC 20005–3917, Attention: Paul D. Ledvina, Records Officer.

FOR FURTHER INFORMATION CONTACT: Mr. Ledvina at the Office of Government Ethics; *telephone:* 202–482–9247; *TTY:* 800–877–8339; *Fax:* 202–482–9237; *E-mail: pledvina@oge.gov.* The model certificates of independence and compliance for qualified trusts are codified in appendixes A, B, and C to 5 CFR part 2634. Copies of the model trust documents are available as one set of OGE publications through the Ethics Documents section of OGE's Web site at *http://www.usoge.gov.* Copies of the qualified trust model certificates and the model trust documents may also be obtained, without charge, by contacting Mr. Ledvina.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is planning to submit, after this first round notice and comment period, all twelve qualified trust model certificates and model documents described below (all of which are included under OMB paperwork control number 3209–0007) for a three-year extension of approval by OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35). At that time, OGE will publish a second paperwork notice in the **Federal Register** to inform the public and the agencies. The current paperwork approval, last granted by OMB in 2007, for the model certificates and model trust documents is scheduled to expire at the end of October 2009. OGE is proposing no changes to the twelve qualified trust certificates and model documents at this time.

In 2003, OGE updated the OGE/GOVT–1 system of records notice (covering SF 278 Public Financial Disclosure Reports and other name-retrieved ethics program records), including the revision of one of the existing routine uses and the addition of the three new routine uses. As a result, the Privacy Act Statement on each of the qualified trust model certificates and documents, which includes paraphrases of the routine uses, is affected. OGE has not incorporated this update into the qualified trust model certificates and documents at this time, since a more thorough revision of these information collections is planned within the next three years. Upon distribution of the trust model certificates and documents, OGE will continue to inform users of the update to the Privacy Act Statement. OGE will also post a notification thereof on its Web site to accompany the model certificates and documents.

OGE is the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act of 1978 (Ethics Act). Presidential nominees to executive branch positions subject to Senate confirmation and any other executive branch officials may seek OGE approval for Ethics Act qualified blind or diversified trusts as one means to be used to avoid conflicts of interest.

OGE is the sponsoring agency for the model certificates and model trust documents for qualified blind and diversified trusts of executive branch officials set up under section 102(f) of the Ethics Act, 5 U.S.C. app. § 102(f), and OGE's implementing financial disclosure regulations at subpart D of 5 CFR part 2634. The various model certificates and model trust documents are utilized by OGE and settlors, trustees and other fiduciaries in establishing and administering these qualified trusts.

There are two categories of information collection requirements that OGE plans to submit for renewed paperwork approval, each with its own related reporting model certificates or model trust documents which are subject to paperwork review and approval by OMB. The OGE regulatory citations for these two categories, together with identification of the forms used for their implementation, are as follows:

i. Qualified trust certifications—5 CFR 2634.401(d)(2), 2634.403(b)(11), 2634.404(c)(11), 2634.406(a)(3) and (b), 2634.408, 2634.409 and appendixes A and B to part 2634 (the two implementing forms, the Certificate of Independence and Certificate of Compliance, are codified respectively in the cited appendixes; see also the Privacy Act and Paperwork Reduction Act notices thereto in appendix C); and

ii. Qualified trust communications and model provisions and agreements—5 CFR 2634.401(c)(1)(i) and (d)(2), 2634.403(b), 2634.404(c), 2634.408 and 2634.409 (the ten implementing forms are the: (A) Blind Trust Communications (Expedited Procedure for Securing Approval of Proposed Communications); (B) Model Qualified Blind Trust Provisions; (C) Model Qualified Diversified Trust Provisions; (D) Model Qualified Blind Trust Provisions (For Use in the Case of Multiple Fiduciaries); (E) Model Qualified Blind Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (F) Model Qualified Diversified Trust Provisions (Hybrid Version); (G) Model Qualified Diversified Trust Provisions (For Use in the Case of Multiple Fiduciaries); (H) Model Qualified Diversified Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (I) Model Confidentiality Agreement Provisions (For Use in the Case of a Privately Owned Business); and (J) Model Confidentiality Agreement Provisions (For Use in the Case of Investment Management Activities). As noted above, blank copies of each of these model documents are posted on OGE's Web site.

The communications formats and the confidentiality agreements (items ii.(A), (I) and (J) above), once completed, would not be available to the public because they contain sensitive, confidential information. All the other completed model trust certificates and model trust documents (except for any trust provisions that relate to the testamentary disposition of trust assets) are retained and made publicly available based upon a proper Ethics Act request (by filling out an OGE Form 201 access form) until the periods for retention of all other reports (usually the SF 278 Public Financial Disclosure Reports) of the individual establishing the trust have lapsed (generally six years after the filing of the last other report). See 5 CFR 2634.603(g)(2) of OGE's executive branch financial disclosure regulation.

The Office of Government Ethics administers the qualified trust program for the executive branch. At the present time, there are no active filers using the trust model certificates and documents, in part reflecting the routine departure of high-level filers from the previous Administration. However, OGE intends to submit to OMB a request for extension of approval for two reasons. First, under OMB's implementing regulations for the Paperwork Reduction Act, at 5 CFR 1320.3(c)(4)(i), any recordkeeping, reporting or disclosure requirement contained in a sponsoring agency rule of general applicability is deemed to meet the minimum threshold of ten or more persons. Second, OGE does anticipate possible limited use of these forms during the forthcoming three-year period 2010–2012. Therefore, the estimated burden figures, representing branchwide implementation of the forms, will remain the same as previously reported by OGE in its prior first and second round paperwork renewal notice for the trust forms in 2007 (72 FR 27132–27134 (May 14, 2007) and 72 FR 46489–46490 (August 20, 2007)). The estimate is based on the amount of time imposed on a trust administrator or private representative.

i. Trust Certificates:

A. Certificate of Independence: Total filers (executive branch): 5; private citizen filers (100%): 5; private citizen burden hours (20 minutes/certificate): 2.

B. Certificate of Compliance: Total filers (executive branch): 10; private citizen filers (100%): 10; private citizen burden hours (20 minutes/certificate): 3; and

ii. Model Qualified Trust Documents:

A. Blind Trust Communications: Total users (executive branch): 5; private citizen users (100%): 5; communications documents (private citizens): 25 (based on an average of five communications per user, per year); private citizen burden hours (20 minutes/communication): 8.

B. Model Qualified Blind Trust: Total users (executive branch): 2; private citizen users (100%): 2; private citizen burden hours (100 hours/model): 200.

C. Model Qualified Diversified Trust: Total users (executive branch): 1; private citizen users (100%): 1; private citizen burden hours (100 hours/model): 100.

D.–H. Of the five remaining model qualified trust documents: total users (executive branch): 2; private citizen users (100%): 2; private citizen burden hours (100 hours/model): 200.

I.–J. Of the two model confidentiality agreements: total users (executive branch): 1; private citizen users (100%): 1; private citizen burden hours (50 hours/agreement): 50.

However, the total annual reporting hour burden on filers themselves is zero and not the 563 hours estimated above because OGE's estimating methodology reflects the fact that all respondents hire private trust administrators or other private representatives to set up and maintain the qualified blind and diversified trusts. Respondents themselves, typically incoming private citizen Presidential nominees, therefore incur no hour burden. The estimated total annual cost burden to respondents resulting from the collection of information is $1,000,000. Those who use the model documents for guidance are private trust administrators or other private representatives hired to set up and maintain the qualified blind and diversified trusts of executive branch officials who seek to establish such qualified trusts. The cost burden figure is based primarily on OGE's knowledge of the typical trust administrator fee structure (an average of 1 percent of total assets) and OGE's experience with administration of the qualified trust program. The $1,000,000 annual cost figure is based on OGE's estimate of an average of five possible active trusts anticipated to be under administration for each of the next two years with combined total assets of $100,000,000. However, OGE notes that the $1,000,000 figure is a cost estimate for the overall administration of the trusts, only a portion of which relates to information collection and reporting. For want of a precise way to break out the costs directly associated with information collection, OGE is continuing to report to OMB the full $1,000,000 estimate for paperwork clearance purposes.

Public comment is invited on each aspect of the model qualified trust certificates and model trust documents, and underlying regulatory provisions, as set forth in this notice, including specific views on the need for and practical utility of this set of collections of information, the accuracy of OGE's burden estimate, the potential for enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

Comments received in response to this notice will be summarized for, and may be included with, the OGE request for extension of the OMB paperwork approval for the set of the various existing qualified trust model certificates, the model communications package, and the model trust documents. The comments will also become a matter of public record.

Approved: September 4, 2009.

Robert I. Cusick,

Director, Office of Government Ethics.

[FR Doc. E9–22266 Filed 9–16–09; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60–Day Proposed Information Collection: Indian Health Service Contract Health Services Report

AGENCY: Indian Health Service.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which requires a 60-day advance opportunity for public comment on the proposed information collection project, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection: Title: 0917–0002, ''Indian Health Service Contract Health Services Report.'' *Type of Information Collection Request:* Three year renewal, with change of currently approved information collection, 0917–0002, ''Indian Health Service Contract Health Services Report'' *Form Number(s):* IHS–843–1A. Reporting formats are contained in an IHS Contract Health Services Manual Exhibit and IHS Web site. *Need and Use of Information Collection:* The IHS Contract Health Services Program needs this information to certify that the health care services requested and authorized by the IHS have been performed by the Contract Health Services provider(s); to have providers validate services provided; to process payments for health care services performed by such providers; and to serve as a legal document for health and medical care authorized by IHS and rendered by health care providers under contract with the IHS.

Affected Public: Patients, health and medical care providers or Tribal Governments.

Type of Respondents: Health and medical care providers.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Annual number of responses, Average burden hour per response, and Total annual burden hours.

Data collection instrument(s)	Estimated number of respondents	Responses per respondent	Annual number of responses	Average burden hour per response*	Total annual burden hours
IHS–843–1A	7,424	51	326,145	0.05 (3 mins)	16,307
IDS**	15,157	1	15,157	0.05 (3 mins)	757
Total	22,581				17,064

* For ease of understanding, burden hours are also provided in actual minutes.

** Inpatient Discharge Summary (IDS)

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the IHS processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (this is the amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests for Further Information: Send your written comments and requests for more information on the proposed collection or requests to obtain a copy of the data collection instrument and instructions to: Ms. Betty Gould, Reports Clearance Officer, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852, call non-toll free (301) 443–7899, send via facsimile to (301) 443–9879, or send your e-mail requests, comments, and return address to: *Betty.Gould@ihs.gov.*

Comment Due Date: Your comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

Dated: September 3, 2009.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. E9–22271 Filed 9–16–09; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–09–0669]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–4766 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of State Nutrition and Physical Activity Programs to Prevent Obesity and Other Chronic Diseases [OMB# 0920–0669 exp. 6/30/2011]—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In order to prevent and control obesity and other chronic diseases, CDC established state-based nutrition and physical activity programs to support the development and implementation of nutrition and physical activity interventions, particularly through population-based strategies such as policy-level changes, environmental supports and the social marketing process. The overall programmatic goal is to promote population-based behavior change, such as increased physical activity and better dietary habits, thus leading to a reduction in the prevalence of obesity, and ultimately to a reduction in the prevalence of chronic diseases. CDC funding for state nutrition and physical activity programs may be used for capacity building, collaboration, planning, monitoring the burden of obesity, intervention, and evaluation.

CDC is currently approved to collect information from funded states as described in ''Evaluation of State Nutrition and Physical Activity Programs to Prevent Obesity and Other Chronic Diseases'' (OMB no. 0920–0669, exp. date 06/30/2011). The evaluation framework for the information collection was designed to focus on recipient activities as outlined in the original funding announcement. Since that time, CDC reissued the cooperative agreement with minor adjustments to program focus and reporting requirements. In the current Revision request, CDC proposes to implement changes to the information collection which reflect those adjustments. Planned modifications include: collection of additional data items pertaining to ''success stories'' and two new behavioral target areas (consumption of sugar-sweetened beverages and consumption of high energy-dense foods); deletion of questions that are no longer relevant; wording changes to improve clarity; and minor changes to the response categories for some questions. CDC also proposes a new, simplified title for the OMB Information Collection Request: ''Monitoring State Nutrition, Physical Activity and Obesity Programs.''

CDC anticipates an overall reduction in burden based on a reduction in the number of respondents, reduction of the estimated burden per response, and reduction in the frequency of information (from a semi-annual schedule to an annual schedule). OMB approval is requested for three years. There are no costs to the respondents other than their time. The total estimated annualized burden hours are 250.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State Awardees	25	1	10

Date: September 9, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–22374 Filed 9–16–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–09–09BH]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Assessing the Safety Culture of Underground Coal Mining—New—National Institute for Occupational Safety and Health, (NIOSH), Centers for Disease Control and Prevention, (CDC).

Background and Brief Description

NIOSH, under Public Law 91–596, (Section 20–22, Occupational Safety and Health Act of 1970) has the responsibility to conduct research relating to innovative methods, techniques, and approaches dealing with occupational safety and health problems.

This research relates to occupational safety and health problems in the coal mining industry. In recent years, coal mining safety has attained national attention due to highly publicized disasters. Despite these threats to worker safety and health, the U.S. relies on coal mining to meet its electricity needs. For this reason, the coal mining industry must continue to find ways to protect its workers while maintaining productivity. One way to do so is through improving the safety culture at coal mines. In order to achieve this culture, operators, employees, the inspectorate, etc. must share a fundamental commitment to it as a value. This type of culture is known in other industries as a ''safety culture.'' Safety culture can be defined as the characteristics of the work environment, such as the norms, rules, and common understandings that influence employees' perceptions of the importance that the organization places on safety.

NIOSH proposes an assessment of the current safety culture of underground coal mining in order to identify recommendations for promoting and ensuring the existence of a positive safety culture across the industry. A total of 6 underground coal mines will be studied for this assessment in an attempt to study mines of different characteristics. It is hoped that a small, a medium and a large unionized as well as non-unionized mines will participate. Data will be collected one time at each mine; this is not a longitudinal study. The assessment includes the collection of data using several diagnostic tools: (a) Functional analysis, (b) structured interviews, (c) behavioral observations, and (d) surveys.

It is estimated that across the 6 mines approximately 900 respondents will be surveyed. Similarly the number of interviews will be based upon the number of individuals in the mine population. An exact number of participants is unavailable at this time because not all mine sites have been selected.

The use of multiple methods to assess safety culture is a key aspect to the methodology. After all of the information has been gathered, a variety of statistical and qualitative analyses are conducted on the data to obtain conclusions with respect to the mine's safety culture. The results from these analyses will be presented in a report describing the status of the behaviors important to safety culture at that mine.

This project will provide recommendations for the enactment of new safety practices or the enhancement of existing safety practices across the underground coal mining industry. This final report will present a generalized model of a positive safety culture for underground coal mines that can be applied at individual mines. In addition, all study measures and procedures will be available for mines to use in the future to evaluate their own safety cultures. There is no cost to respondents other than their time. The total estimated annualized burden hours are 480.

ESTIMATED ANNUALIZED BURDEN HOURS

Phase	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Year one Survey	Mine Employees	500	1	20/60
Year one Interviews	Mine Employees	100	1	1
Year two Survey	Mine Employees	400	1	20/60
Year two Interviews	Mine Employees	80	1	1

Date: September 9, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–22373 Filed 9–16–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0408]

Draft Guidance for Industry on Microbiological Data for Systemic Antibacterial Drug Products—Development, Analysis, and Presentation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Microbiological Data for Systemic Antibacterial Drug Products—Development, Analysis, and Presentation.'' The draft guidance informs industry of FDA's current thinking regarding the types of microbiological studies, assessments, and clinical trials needed to support an investigational new drug application (IND) and a new drug application (NDA) for a systemic antibacterial drug product. Recommendations in this guidance cover microbiological considerations in the three major areas of conducting general nonclinical studies; conducting animal and human studies and clinical trials; and establishing and updating in vitro susceptibility test methods, quality control (QC) parameters, and interpretive criteria. This guidance also recommends the content and format for presentation of microbiological data for antibacterial drug products in the Microbiology subsection of labeling.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by December 16, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Fred Marsik, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6108, Silver Spring, MD 20993–0002, 301–796–7956; or

Edward Cox, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6212, Silver Spring, MD 20993–0002, 301–796–1300.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Microbiological Data for Systemic Antibacterial Drug Products—Development, Analysis, and Presentation.'' This guidance provides recommendations on the type of information to provide in submissions to the clinical microbiology section of INDs and NDAs for systemic antibacterial drug products. The in vitro microbiological data and in vivo animal studies (e.g., spectrum of activity in vitro and in appropriate animal models of human disease) support the justification of testing in humans. Sponsors usually submit data from nonclinical investigations to provide proof of concept of clinical activity before commencing human phase 2 studies and clinical trials and to aid in the development of provisional interpretive criteria for use in phase 3 clinical trials. Microbiological data submitted to an NDA will be used to substantiate the microbiological information contained in the labeling.

Specific topics discussed in the guidance include validating in vitro susceptibility testing methods; mechanism of action studies; mechanism of resistance studies; use of animal models; clinical trial protocols; establishment of QC parameters and interpretive criteria; submission and placement of microbiology information in the NDA submission; format and content of the Microbiology subsection of the labeling; and revision of existing susceptibility testing methods, QC parameters, or interpretive criteria.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the microbiological data for systemic antibacterial drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

(1) The draft guidance provides recommendations on the type of information to include in submissions of the clinical microbiology section of INDs and NDAs for systemic antibacterial drug products. The microbiology section of an NDA is required under 21 CFR 314.50(d)(4) and this information collection is approved under OMB Control Number 0910–0001. For INDs, this information is required under 21 CFR 312.23(a) and approved under OMB Control Number 0910–0014.

(2) The draft guidance also recommends the types of data that should be submitted in a labeling supplement to update the microbiology information in approved labeling if an application holder chooses to update this information without relying on a standard recognized by FDA. The submission of labeling supplements is required under 21 CFR 314.70(b)(2)(v) and 201.56(a)(2) and this information collection is approved under OMB Control Numbers 0910–0001 and 0910–0572, respectively.

(3) Appendix A of the draft guidance describes the content of the Microbiology subsection of labeling. This labeling is covered under 21 CFR 201.57(c)(13)(i) and the information collection is approved under OMB Control Number 0910–0572.

(4) The draft guidance also references the guidance for industry entitled ''Updating Labeling for Susceptibility Test Information in Systemic Antibacterial Drug Products and Antimicrobial Susceptibility Testing Devices'' for updating labeling information. The information collection in this guidance has been approved under OMB Control Number 0910–0638.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: September 10, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–22380 Filed 9–16–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0293]

Guidance for Industry: Considerations for Allogeneic Pancreatic Islet Cell Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Considerations for Allogeneic Pancreatic Islet Cell Products'' dated September 2009. The guidance document provides recommendations to manufacturers, sponsors, and clinical investigators involved in the transplantation of allogeneic pancreatic islet cell products for clinical investigations of the treatment of type 1 diabetes mellitus. The guidance identifies the types of data and information obtained during investigational new drug studies that may be helpful in establishing the safety, purity, and potency of a biological product in a biologics license application (BLA). The guidance announced in this notice finalizes the draft guidance of the same title, dated May 2008.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Considerations for Allogeneic Pancreatic Islet Cell Products'' dated September 2009. The guidance document provides recommendations to manufacturers, sponsors, and clinical investigators involved in the transplantation of allogeneic pancreatic islet cell products for clinical investigations of the treatment of type 1 diabetes mellitus. The guidance identifies the types of data and information that may be obtained during investigational new drug studies to assist in establishing the safety, purity, and potency of a biological product in a BLA. However, the guidance is not intended to identify all of the product, preclinical, and clinical data that may be needed to successfully support a BLA.

In the **Federal Register** of May 22, 2008 (73 FR 29760), FDA announced the availability of the draft guidance of the same title, dated May 2008. FDA received a few comments on the draft guidance and those comments were considered as the guidance was finalized. The guidance announced in this notice finalizes the draft guidance dated May 2008.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

The guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 211 has been approved under 0910–0139; the collections of information in 21 CFR part 312 has been approved under 0910–0014; the collections of information in 21 CFR parts 601 and 610 have been approved under 0910–0338; and the collections of information in 21 CFR part 1271 has been approved under 0910–0543 and 0910–0559.

III. Comments

Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm* or *http://www.regulations.gov*.

Dated: September 11, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–22426 Filed 9–16–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel—NIBIB Training Review.

Date: November 5, 2009.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Quincy Hotel, 1823 L Street, NW., Washington, DC 20036.

Contact Person: Manana Sukhareva, PhD, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 959, Bethesda, MD 20892. 301–451–3397. *sukharem@mail.nih.gov*.

Dated: September 11, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–22432 Filed 9–16–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Mentored Clinical Scientist Research Awards.

Date: October 8–9, 2009.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: Robert Blaine Moore, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7213, Bethesda, MD 20892, 301–594–8394, *mooreb@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 11, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–22433 Filed 9–16–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0355]

Submission of Quality Information for Biotechnology Products in the Office of Biotechnology Products; Notice of Extension of Deadlines to Request Participation in Pilot Program and to Submit Applications; and Notice of Increase in the Number of Original Applications in Pilot Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an extension of the deadline for submitting requests to participate in a pilot program involving the submission of quality (chemistry, manufacturing, and controls (CMC)) information for biotechnology products in an Expanded Change Protocol consistent with the principles of quality-by-design and risk management in pharmaceutical manufacturing. Because the deadline for requests to participate in the pilot is being extended, FDA is also extending the application submission deadlines. FDA is also announcing an increase in the number of original applications being accepted into the pilot program.

DATES: Submit written and electronic requests to participate in the pilot program by September 30, 2010. Submit investigational new drug (IND) applications and postapproval supplements by March 31, 2011.

ADDRESSES: Submit written requests to participate in the pilot program to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic requests to participate in the pilot to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Marilyn Welschenbach, Center for Drug Evaluation and Research, Food and Drug Administration, Bldg. 21, rm. 1514, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, e-mail: *Marilyn.Welschenbach@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 2, 2008 (73 FR 37972) (the July 2, 2008, notice), FDA announced that it is seeking volunteers from pharmaceutical companies to participate in a pilot program involving the submission of quality (CMC) information for biotechnology products in an Expanded Change Protocol, consistent with the principles of quality-by-design and risk management in pharmaceutical manufacturing. As explained in the July 2, 2008, notice, the Office of Pharmaceutical Science (OPS), in FDA's Center for Drug Evaluation and Research (CDER), is establishing a quality-by-design, risk-based approach to pharmaceutical quality, which is based on the FDA final report on ''Pharmaceutical cGMPs for the 21st Century—A Risk-Based Approach'' (*http://www.fda.gov/cder/gmp/gmp2004/GMP_finalreport2004.htm*). The new quality-by-design approach will focus on critical quality attributes related to chemistry, formulation, and process design. Under quality-by-design, manufacturing will depend on a risk-based approach linking attributes and processes to product performance, safety, and efficacy.

The principles underlying this new approach to a quality-by-design, risk-based assessment can be found in the International Conference on Harmonisation guidances, ''Q8(R1) Pharmaceutical Development,'' June 2009 (*http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm073507.pdf*), and ''Q9 Quality Risk

Management (ICH),'' June 2006 (*http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm073511.pdf*), and FDA's guidances for industry entitled ''PAT—A Framework for Innovative Pharmaceutical Development, Manufacturing, and Quality Assurance,'' September 2004 (*http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm070305.pdf*), and ''Quality Systems Approach to Pharmaceutical CGMP Regulations,'' September 2006 (*http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm070337.pdf*). Quality-by-design and risk-based approaches are also described in ''Q10 Pharmaceutical Quality Systems,'' April 2009 (*http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm073517.pdf*).

The agency's Office of New Drug Quality Assessment in OPS, CDER, initiated a pilot program (70 FR 40719, July 14, 2005) to gain experience in assessing CMC sections of new drug applications (NDAs) that demonstrate an applicant's product knowledge and process understanding at the time of submission. This pilot was extremely useful in helping identify appropriate information to be shared regarding quality-by-design for small molecules. Although many of the principles of quality-by-design apply equally to small molecules and more complex pharmaceuticals, the ability to assess relevant attributes is a much greater challenge for complex pharmaceuticals.

Because the pilot program initiated in 2005 proved constructive, on July 2, 2008, FDA announced this pilot program to provide additional information to FDA for use in facilitating quality-by-design, risk-based approaches for complex molecules. Based on experience gained during the pilot program and prior knowledge, FDA will develop procedures to facilitate implementing a quality-by-design, risk-based approach for complex products. In addition, the experience gained by FDA under this pilot is expected to facilitate the development of guidance for industry. The pilot is open to original submissions and postapproval supplements to biologics license applications (BLAs) and NDAs reviewed by the Office of Biotechnology Products (OBP).

The July 2, 2008, notice provided deadlines related to the submission of certain information related to the pilot program. To ensure inclusive and relevant results from the pilot program, this document extends the deadline for requests to participate in this pilot program for products regulated by OBP from September 30, 2009, to September 30, 2010. Because the deadline for requests to participate in the pilot is being extended, FDA is also extending the application submission deadlines. As explained in the July 2, 2008, notice, it is preferable for original applications to enter the pilot as INDs. FDA is extending the deadline for submission of INDs from March 31, 2010, to March 31, 2011. FDA is also extending the deadline for submission of postapproval supplements from March 31, 2010, to March 31, 2011. In addition, the pilot is being expanded from five to eight original applications for products reviewed by OBP (BLA or NDA) in Common Technical Document format, paper or electronic. See the July 2, 2008, notice for instructions on submitting requests to participate in the pilot program and additional information regarding the pilot program.

Dated: September 11, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–22378 Filed 9–16–09; 8:45 am]

BILLING CODE 4160–01–S

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Draft Program Comment for the National Telecommunications and Information Administration and the U.S. Department of Agriculture's Rural Utilities Service Regarding the Effects of Communication Facilities Construction or Modification Subject To Review by the Federal Communications Commission

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Intent to Issue Program Comments for the National Telecommunications and Information Administration and the U.S. Department of Agriculture's Rural Utilities Service Regarding the Effects of Communication Facilities Construction or Modification Subject to Review by the Federal Communications Commission.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) is considering issuing a Program Comment for the National Telecommunications and Information Administration and the U.S. Department of Agriculture's Rural Utilities Service that would relieve them of the need to conduct a separate Section 106 review regarding the effects of communication facilities construction or modification that will be subject to such review by the Federal Communications Commission. The ACHP seeks public input on the proposed Program Comment.

DATES: Submit comments on or before October 8, 2009.

ADDRESSES: Address all comments concerning this proposed Program Comment to Blythe Semmer, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 803, Washington, DC 20004. Fax (202) 606–8647. You may submit electronic comments to: *bsemmer@achp.gov*.

FOR FURTHER INFORMATION CONTACT: Blythe Semmer, (202) 606– 8552, *bsemmer@achp.gov*; or Laura Dean, PhD, RUS Federal Preservation Officer, (202) 720–9634, *laura.dean@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act requires federal agencies to consider the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued the regulations that set forth the process through which Federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (Section 106 regulations).

Under Section 800.14(e) of those regulations, agencies can request the ACHP to provide a ''Program Comment'' on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.4 through 800.7.

The ACHP is now considering issuing a Program Comment to the National Telecommunications and Information Administration (NTIA) and the U.S. Department of Agriculture's Rural Utilities Service (RUS) that would relieve them of the need to conduct a separate Section 106 review regarding the effects of communication facilities construction or modification that will be subject to such review by the Federal Communications Commission (FCC).

I. Background

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) into law. The Recovery Act provides the NTIA and the RUS with $7.2 billion to expand access to broadband services in the United States. In implementing this responsibility, NTIA, through its Broadband

Technology Opportunities Program (BTOP), will award grants to expand public computer capacity, encourage sustainable adoption of broadband service and deploy broadband infrastructure to unserved and underserved areas. RUS, through its Broadband Initiatives Program (BIP), will use loan and grant combinations to support broadband deployment in rural communities.

Technological solutions available to speed the deployment of affordable broadband under those programs are diverse and include the construction and modification of communications towers and antennas. Some of those communication towers and antennas will be regulated by the FCC. For such proposals that are regulated by the FCC and assisted by RUS and/or NTIA, each agency would be individually responsible for compliance with Section 106.

The FCC, ACHP, and the National Conference of State Historic Preservation Officers (NCSHPO) have executed the Nationwide Programmatic Agreement for Review of Effects on Historic Properties For Certain Undertakings Approved by the FCC (FCC Nationwide PA) and the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (FCC Collocation PA) to govern how FCC meets its Section 106 responsibilities for certain undertakings, including communication towers and antennas. In implementing the terms of those programmatic agreements, FCC has established a procedure that is supported by innovative approaches that expedite review and facilitate the involvement of stakeholders, most notably Indian tribes, to ensure that effects to historic properties are taken into account.

Currently, it is not possible for RUS and NTIA to benefit from the implementation of those programmatic agreement solutions in meeting their individual Section 106 responsibilities, because the FCC Nationwide PA stipulates that it does not govern the Section 106 responsibilities of any federal agency other than the FCC. This means that FCC, RUS and NTIA must each conduct separate Section 106 reviews for the same proposed undertaking. Such an approach does not seem to be efficient, particularly within the context of the compressed schedules established by the Recovery Act. Accordingly, pursuant to 36 CFR 800.14(e), NTIA and RUS have requested the ACHP to issue a program comment that removes their requirement to comply with Section 106 with regard to the effects of communications facilities construction or modification that has undergone, will undergo, or is exempt from, Section 106 review by the FCC under the cited FCC programmatic agreements.

Under the Recovery Act, all NTIA and RUS grants and loans must be awarded by September 30, 2010. Construction of proposals receiving awards must be complete within three years of the award. Recovery Act responsibilities of NTIA and RUS, therefore, will extend to 2013. In order to accommodate for currently unknown contingencies, RUS and NTIA have requested that the effective termination of the proposed program comment be extended to September 30, 2015.

RUS and NTIA have informed the ACHP that, prior to their formal request, they sought to share their intent to develop this program comment with the following historic preservation, tribal, and telecommunications industry organizations: National Trust for Historic Preservation, NCSHPO, American Cultural Resources Association, National Association of Tribal Historic Preservation Officers (NATHPO), United South and Eastern Tribes (USET), National Congress of American Indians, Affiliated Tribes of Northwest Indians, Office of Hawaiian Affairs (OHA), CTIA The Wireless Association, PCIA—The Wireless Infrastructure Association, and the Association of Public Safety Communications Officials. RUS and NTIA discussed this proposal with all of the listed parties except OHA, and reported that, in general, those organizations contacted were supportive, noting that this approach represented a common sense solution. In addition to those parties, NTIA and RUS have worked closely with the FCC throughout the development of the proposed program comment.

RUS and NTIA also reported that several parties expressed concern that the proposed program comment would alter or modify the FCC Nationwide PA. That is not the intent of the proposed program comment and a statement to that effect has been included in the proposal itself.

RUS and NTIA anticipate that BTOP/EIP applications will not consist solely of tower construction and modification. Accordingly, they have clarified the applicability of the program comment for multi-component proposals.

NCSHPO was concerned about how this program comment would affect existing agreements. If, under the program comment, RUS and NTIA are not responsible for compliance with Section 106 for FCC regulated towers, then the trigger for existing agreements has been removed.

USET explained to RUS and NTIA that it did not support expansion of the scope of the proposed program comment to all federal agencies. Accordingly, the proposal submitted to the ACHP applies to only NTIA and RUS. Finally, USET expressed concern that this process is being rushed and, as a consequence, tribes will not be allowed sufficient time to consult with agencies. However, the congressionally mandated Recovery Act schedules argue for an expedited process.

III. Text of the proposed Program Comment

The text of the proposed Program Comment is included below:

Program Comment for Streamlining Section 106 Review for Wireless Communication Facilities Construction and Modification Subject To Review Under the FCC Nationwide Programmatic Agreement and/or the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas

I. Background: The Rural Utilities Service (RUS) and the National Telecommunications and Information Administration (NTIA) provide financial assistance to applicants for broadband deployment, which can involve the construction and placement of communications towers and antennas, and therefore RUS and NTIA must comply with Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, and its implementing regulations at 36 CFR part 800 (Section 106). Some of those communications towers and antennas are also regulated by the Federal Communications Commission (FCC), and therefore undergo, or are exempted from, Section 106 review under the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the FCC (FCC Nationwide PA) and the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (FCC Collocation PA). The FCC Nationwide PA was executed by the FCC, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) on October 4, 2004. The FCC Collocation PA was executed by the FCC, ACHP, and NCSHPO on March 16, 2001. The undertakings addressed by the FCC Nationwide PA primarily include the construction and modification of communication towers. The undertakings addressed by the FCC

Collocation PA include the collocation of communications equipment on existing structures and towers.

This Program Comment is intended to streamline Section 106 review of the construction and modification of communication towers and antennas for which FCC and RUS or NTIA share Section 106 responsibility.

Nothing in this Program Comment alters or modifies the FCC Nationwide PA or the FCC Collocation PA, or imposes Section 106 responsibilities on the FCC for elements of an RUS or NTIA undertaking that are unrelated to a communications facility within the FCC's jurisdiction or are beyond the scope of the FCC Nationwide PA.

II. Establishment and Authority: This Program Comment was issued by the ACHP on (date to be determined) pursuant to 36 CFR 800.14(e).

III. Date of Effect: This Program Comment went into effect on (date to be determined).

IV. Use of this Program Comment to Comply with Section 106 for the Effects of Facilities Construction or Modification Reviewed under the FCC Nationwide PA and/or the FCC Collocation PA: RUS and NTIA will not need to comply with Section 106 with regard to the effects of communication facilities construction or modification that has either undergone or will undergo Section 106 review, or is exempt from Section 106 review, by the FCC under the FCC Nationwide PA and/or the FCC Collocation PA. For purposes of this program comment, review under the FCC Nationwide PA means the historic preservation review that is necessary to complete the FCC's Section 106 responsibility for an undertaking that is subject to the FCC Nationwide PA.

When an RUS or NTIA undertaking includes both communications facilities construction or modification covered by the FCC Nationwide PA or Collocation PA and components in addition to such communication facilities construction or modification, RUS and NTIA will comply with Section 106 in accordance with the process set forth at 36 CFR 5 800.3 through 800.7, or 36 CFR 800.8(c), or another applicable alternate procedure under 36 CFR 800.14, but will not have to consider the effects of the communication facilities construction or modification component of the undertaking on historic properties. Whenever RUS or NTIA uses this Program Comment for such undertakings, RUS or NTIA will apprise the relevant State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) of the use of this Program Comment for the relevant communication facilities construction or modification component.

V. Amendment—The ACHP may amend this Program Comment after consulting with FCC, RUS, NTIA and other parties as appropriate, and publishing notice in the **Federal Register** to that effect.

VI. Sunset Clause—This Program Comment will terminate on September 30, 2015, unless it is amended to extend the period in which it is in effect.

VII. Termination—The ACHP may terminate this Program Comment by publication of a notice in the **Federal Register** thirty (30) days before the termination takes effect.

Authority: 36 CFR 800.14(e).

Dated: September 10, 2009.

John M. Fowler,

Executive Director.

[FR Doc. E9–22273 Filed 9–16–09; 8:45 am]

BILLING CODE 4310–K6–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0744]

Certificate of Alternative Compliance for the Offshore Supply Vessel TYLER STEPHEN

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the offshore supply vessel *Tyler Stephen* as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on July 29, 2009.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2009–0744 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2153. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The offshore supply vessel *Tyler Stephen* will be used for offshore supply operations. Full compliance with 72 COLREGS and the Inland Rules Act will hinder the vessel's ability to maneuver within close proximity of offshore platforms. Due to the design of the vessel, it would be difficult and impractical to build a supporting structure that would put the side lights within 5.4' from the greatest breadth of the Vessel, as required by Annex I, paragraph 3(b) of the 72 COLREGS and Annex I, Section 84.05(b), of the Inland Rules Act. Compliance with the rule would cause the lights on the offshore supply vessel *Tyler Stephen* to be in a location which will be highly susceptible to damage from offshore platforms. The offshore supply vessel *Tyler Stephen* cannot comply fully with lighting requirements as set out in international regulations without interfering with the special function of the vessel (33 U.S.C. 1605(c); 33 CFR 81.18).

Locating the side lights 6′– 9⅝'' inboard from the greatest breadth of the vessel on the pilot house will provide a shelter location for the lights and allow maneuvering within close proximity to offshore platforms.

In addition, the horizontal distance between the forward and aft masthead lights may be 23′–1 ⅛''. Placing the aft masthead light at the horizontal distance from the forward masthead light as required by Annex I, paragraph 3(a) of the 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act, would result in an aft masthead light location directly over the aft cargo deck, where it would interfere with loading and unloading operations.

The Certificate of Alternative Compliance allows for the placement of the side lights to deviate from requirements set forth in Annex I, paragraph 3(b) of 72 COLREGS, and Annex I, paragraph 84.05(b) of the Inland Rules Act. In addition the Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: August 10, 2009.

J.W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. E9–22357 Filed 9–16–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0745]

Certificate of Alternative Compliance for the Offshore Supply Vessel ELLA G

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the offshore supply vessel ELLA G as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on July 28, 2009.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2009–0745 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2153. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The offshore supply vessel ELLA G will be used for offshore supply operations. The horizontal distance between the forward and aft masthead lights may be 21′–10″. Placing the aft masthead light at the horizontal distance from the forward masthead light as required by Annex I, paragraph 3(a) of the 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act, would result in an aft masthead light location directly over the cargo deck where it would interfere with loading and unloading operations.

The Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: August 10, 2009.

J.W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. E9–22356 Filed 9–16–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0434]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee will meet in New Orleans to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. This meeting will be open to the public.

DATES: The Committee will meet on Wednesday, October 7, 2009 from 9 a.m. to noon. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before September 23, 2009. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before September 23, 2009.

ADDRESSES: The Committee will meet at the New Orleans Yacht Club, 403 North Roadway, West End, New Orleans, LA 70124. Send written material and requests to make oral presentations to Commander, Coast Guard Sector New Orleans, Designated Federal Officer (DFO) of Lower Mississippi River Waterway Safety Advisory Committee, *Attn:* Waterways Management, 1615 Poydras St., New Orleans, LA 70112. This notice, and documents identified in the **SUPPLEMENTARY INFORMATION** section as being available in the docket may be viewed in our online docket, USCG–2009–0434, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer David Chapman, Assistant to DFO of Lower Mississippi River Waterway Safety Advisory Committee, telephone 504–565–5103.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of Meeting

The agenda for the October 7, 2009 Committee meeting is as follows:

(1) Introduction of committee members.
(2) Opening Remarks.
(3) Approval of the June 2, 2009 minutes.
(4) Old Business.
(a) Captain of the Port status report.
(b) VTS update report.
(c) Subcommittee/Working Groups update reports.
(5) New Business.
(6) Adjournment.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at a meeting, please notify the DFO no later than September 23, 2009. Written material for distribution at a meeting should reach the Coast Guard no later than September 23, 2009. If you would like a copy of your material distributed to each member of the committee in advance of a meeting, please submit 25 copies to the DFO no later than September 23, 2009.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the DFO as soon as possible.

Dated: August 26, 2009.

Mary E. Landry,

Rear Admiral, U.S. Coast Guard, Commander, 8th Coast Guard District.

[FR Doc. E9–22358 Filed 9–16–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5346–N–01]

Multifamily Mortgage Insurance Premiums (MIPs) and Credit Subsidy Obligations for Fiscal Year (FY) 2010

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces the mortgage insurance premiums (MIPs) for Federal Housing Administration (FHA) multifamily mortgage insurance programs, health care facilities; and hospital insurance programs that have commitments to be issued or reissued in Fiscal Year (FY) 2010. The FY2010 MIPs are the same as in FY2009. In addition to announcing MIPs for FY2010, this notice also announces:

(A) The credit subsidy obligations for FY2010 are the same as those for firm commitments issued or reissued in FY2009. There are three positive credit subsidy programs: (1) Section 221(d)(3) New Construction/Substantial Rehabilitation for Nonprofit/Cooperatives; (2) Section 241(a) Supplemental Loans for apartments only; and (3) Section 223(d) Operating Loss Loans.

(B) The addition of an MIP for FHA's hospital insurance program, section 242/223f refinancing of an existing hospital.

DATES: *Effective Date:* October 1, 2009.

FOR FURTHER INFORMATION CONTACT: Eric Stevenson, Deputy Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone: 202–708–1142 (this is not a toll-free number). Hearing- or speech-impaired individuals may access these numbers through TTY by calling the Federal Information Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

HUD's multifamily housing mortgage insurance regulation at 24 CFR 207.254 provides as follows:

> Notice of future premium changes will be published in the **Federal Register**. The Department will propose MIP changes for multifamily mortgage insurance programs and provide a 30-day public comment period for the purpose of accepting comments on whether the proposed changes are appropriate.

Under this regulation, HUD is required to publish a notice for public comment only when there are premium ''changes.'' Since HUD is not seeking to implement any premium changes for FY2010 for the multifamily mortgage insurance programs, health care facilities; and hospital insurance programs listed in this notice, a notice and public comment is not required. The MIP for the new provision for refinancing a hospital, set at 50 basis points, is the same as HUD's MIPs for other hospital financing programs and thus does not represent a change. HUD is merely providing this notice to ensure that there is clarity on the appropriated MIPs charged for FY2010, and is not seeking public comments.

II. Low-Income Housing Tax Credits

MIP rates for many multifamily FHA mortgage programs depend on whether or not the sponsor is combining low-income housing tax credits with the FHA-insured loan. Under the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235 (approved December 15, 1989), and HUD's implementing instructions, a sponsor is required to submit a certification regarding governmental assistance, including any low-income housing tax credits, with mortgage insurance applications.

III. MIPs for Multifamily Programs for FY2010

This notice announces the MIPs, listed in this notice, which will be in effect during FY2010 for the multifamily housing programs, health care facilities; and hospital insurance programs. FHA's hospital mortgage insurance program, which is overseen by FHA's Office of Insured Health Care Facilities, is authorized under section 242 of the National Housing Act, 12 U.S.C. 1715z–7. Section 241(a) Supplemental Loans for hospitals and Section 223(a)(7) for Refinancing of existing hospitals under FHA-insured for the Section 242 Hospital Program are separately listed in the chart that follows. The effective date for these mortgage insurance premiums is October 1, 2009.

Credit Subsidy

This notice also announces that a credit subsidy obligation continues to be required for the three sections of the National Housing Act listed below. However, if the mortgagor's equity is produced from low-income housing tax credits (LIHTC) for Sections 221(d)(3) or 241(a), a credit subsidy obligation will not be required. For the loans requiring a credit subsidy obligation, the program office inserts a special clause into the firm commitment or an invitation pertaining to a Site Appraisal and Market Analysis (SAMA)/Feasibility/Multifamily Accelerated Processing (MAP) letter. The clause states that the firm commitment is contingent upon availability of funds.

- Section 221(d)(3) New Construction/Substantial Rehabilitation for Nonprofit/Cooperatives.
- Section 223(d) Operating Loss Loans for both apartments and health care facilities.
- Section 241(a) Supplemental Loans for additions or improvements for apartments only.

The mortgage insurance premiums to be in effect for FHA firm commitments issued or reissued in FY2010 are shown in the table below.

FISCAL YEAR 2010 MIP RATES—MULTIFAMILY, HEALTH CARE FACILITIES AND HOSPITAL INSURANCE PROGRAMS

	Basis points
FHA Apartments:	
207 Multifamily Housing New Construction/Sub Rehab without LIHTC	50
207 Multifamily Housing New Construction/Sub Rehab with LIHTC	45
207 Manufactured Home Parks without LIHTC	50
207 Manufactured Home Parks with LIHTC	45
221(d)(3) New Construction/Substantial Rehabilitation (NC/SR) for Nonprofit/Cooperative mortgagor without LIHTC	80
221(d)(3) Limited dividend with LIHTC	45
221(d)(4) NC/SR without LIHTC	45
221(d)(4) NC/SR with LIHTC	45
220 Urban Renewal Housing without LIHTC	50
220 Urban Renewal Housing with LIHTC	45
213 Cooperative	50
207/223(f) Refinance or Purchase for Apartments without LIHTC	*45
207/223(f) Refinance or Purchase for Apartments with LIHTC	*45
223(a)(7) Refinance of Apartments without LIHTC	45
223(a)(7) Refinance of Apartments with LIHTC	45

FISCAL YEAR 2010 MIP RATES—MULTIFAMILY, HEALTH CARE FACILITIES AND HOSPITAL INSURANCE PROGRAMS—Continued

	Basis points
223d Operating Loss Loan for Apartments	80
241(a) Supplemental Loans for Apartments/coop without LIHTC	80
241(a) Supplemental Loans for Apartments/coop with LIHTC	45
FHA Health Care Facilities (Nursing Homes, ALF & B&C):	
232 NC/SR Health Care Facilities without LIHTC	57
232 NC/SR—Assisted Living Facilities with LIHTC	45
231 Elderly Housing without LIHTC	50
231 Elderly Housing with LIHTC	45
232/223(f) Refinance for Health Care Facilities without LIHTC	*50
232/223(f) Refinance for Health Care Facilities with LIHTC	*45
223(a)(7) Refinance of Health Care Facilities without LIHTC	50
223(a)(7) Refinance of Health Care Facilities with LIHTC	45
223d Operating Loss Loan for Health Care Facilities	80
241(a) Supplemental Loans for Health Care Facilities without LIHTC	57
241(a) Supplemental Loans for Health Care Facilities with LIHTC	45
FHA Hospitals:	
242 Hospitals	50
223(f) Refinance of Existing FHA-insured Hospital	50
223(a)(7) Refinance of Existing FHA-insured Hospital	50
241(a) Supplemental Loans for Hospitals	50

*The First Year MIP for the section 207/223(f) loans for apartments is 100 basis (one percent) points for the first year, as specified in sections 24 CFR 207.232b(a). The first year MIP for a 232/223(f) health care facility remains at 100 basis points (one percent).

Dated: September 10, 2009.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E9–22342 Filed 9–16–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0094

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for 30 CFR part 700—General, has been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection request describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before October 19, 2009, to be assured of consideration.

ADDRESSES: Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via e-mail at *OIRA_Docket@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202—SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please reference 1029–0094 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact John Trelease at (202) 208–2783. You may also contact Mr. Trelease by e-mail at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval for the collections of information found at 30 CFR part 700—General. OSM is requesting a 3-year term of approval for this collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0094.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on June 22, 2009 (74 FR 29511). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR part 700—General.

OMB Control Number: 1029–0094.

Summary: This Part establishes procedures and requirements for terminating jurisdiction of surface coal mining and reclamation operations, petitions for rulemaking, and citizen suits filed under the Surface Mining Control and Reclamation Act of 1977.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State and tribal regulatory authorities, private citizens and citizen groups, and surface coal mining companies.

Total Annual Responses: 3.

Total Annual Burden Hours: 25.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the offices listed in the **ADDRESSES** section. Please refer to the appropriate OMB control number in all correspondence.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 10, 2009.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. E9–22270 Filed 9–16–09; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID933000.L14300000.FR0000; IDI–35568]

Notice of Correction to Notice of Application for Recordable Disclaimer of Interest in Lands, Bingham County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: This Notice corrects a Notice of Application for a Recordable Disclaimer of Interest from Randy Lynne Jackson, personal representative of the estate of Donald F. Jackson, deceased. The BLM published the original notice on Monday, December 22, 2008 [73 FR 78388]. The original notice included a metes and bounds legal description which contained several errors.

FOR FURTHER INFORMATION CONTACT: Laura Summers, (208) 373–3866.

SUPPLEMENTARY INFORMATION: The erroneous legal land description is replaced with the following corrected legal land description:

Commencing at the northwest corner of section 6; thence along the north line of section 6, S89°16′44″ E 3507.82 feet to a meander corner at the intersection with the right bank meander line of the Snake River as surveyed in 1925 by H.G. Bardsley, Cadastral Engineer, during performance of the U.S.G.L.O. Survey and Retracement or Resurvey of portions of the North and West boundaries and Survey of Meanders in Township 4 South, Range 34 East, Boise Meridian, marked by a 1925 G.L.O. Brass Cap Monument as recorded in the field notes for this survey and the TRUE POINT OF BEGINNING; thence southwesterly along the right bank meander line by the following courses (these courses are rotated to the basis of bearings in the 1925 survey and have been translated from chains to feet as requested by Idaho Department of Lands.): Thence S19°12′49″ W 133.32 feet; thence S30°25′16″ W 660.00 feet; thence S50°00′14″ W 517.37 feet; thence S51°56′03″ W 142.69 feet; thence S59°25′16″ W 297.00 feet; thence S86°25′16″ W 198.00 feet; thence N82°34′44″ W 198.00 feet; thence S54°25′16″ W 224.40 feet; thence S75°25′16″ W 330.00 feet; thence S88°25′16″ W 191.65 feet to a point of intersection with the westerly boundary of the land described in Quitclaim Deed instrument numbers 490751 and 490752, and depicted graphically on a Record of Survey on file in the Bingham County Courthouse, Blackfoot, Idaho; thence along the westerly boundary S00°42′23″ W 2154.37 feet to a point on the ordinary high water line of the right bank of the Snake River, monumented with a 1/2″x24″ iron pin with red plastic cap marked PLS 9168; thence upstream along the ordinary high water mark of the right bank of the main channel of the Snake River S87°01′43″ E 252.50 feet; thence N74°48′08″ E 313.19 feet; thence N67°48′08″ E 243.19 feet; thence N63°21′08″ E 250.02 feet; thence N54°28′37″ E 363.79 feet; thence N41°51′36″ E 150.62 feet; thence N50°54′43″ E 611.67 feet; thence N28°19′06″ E 138.83 feet; thence N46°39′55″ E 336.07 feet; thence N32°16′59″ E 292.13 feet; thence N24°27′36″ E 188.15 feet; thence N19°03′54″ E 241.69 feet; thence N00°00′00″ E 79.90 feet; thence N13°00′02″ E 175.78 feet; thence N06°36′36″ E 357.80 feet; thence N06°27′46″ W 727.79 feet; thence N12°12′18″ W 271.35 feet to intersection with the north line of section 6; thence along the section line N74°52′56″ W 189.82 feet to the TRUE POINT OF BEGINNING.

Jerry L. Taylor,

Chief, Branch of Lands, Minerals and Water Rights Resource Services Division.

[FR Doc. E9–22443 Filed 9–16–09; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability.

SUMMARY: The following Water Management Plans are available for review:

- Colusa County Water District.
- Madera Irrigation District.
- San Benito County Water District.

To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Management Plans (Criteria). For the purpose of this announcement, Water Management Plans (Plans) are considered the same as Water Conservation Plans. The above entities have developed a Plan, which Reclamation has evaluated and preliminarily determined to meet the requirements of these Criteria. Reclamation is publishing this notice in order to allow the public to review the plans and comment on the preliminary determinations. Public comment on Reclamation's preliminary (*i.e.,* draft) determination is invited at this time.

DATES: All public comments must be received by October 19, 2009.

ADDRESSES: Please mail comments to Ms. Laurie Sharp, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, or contact at 916–978–5232 (TDD 978–5608), or e-mail at *lsharp@mp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Ms. Laurie Sharp at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on our preliminary *(i.e.,* draft) determination of Plan adequacy. Section 3405(e) of the CVPIA (Title 34 Pub. L. 102–575), requires the Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall ''* * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.'' Also, according to section 3405(e)(1), these criteria must be developed '' * * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.'' These criteria state that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District.
2. Inventory of Water Resources.
3. Best Management Practices (BMPs) for Agricultural Contractors.
4. BMPs for Urban Contractors.
5. Plan Implementation.
6. Exemption Process.
7. Regional Criteria.
8. Five-Year Revisions.

Reclamation will evaluate Plans based on these criteria. A copy of these Plans will be available for review at Reclamation's Mid-Pacific (MP) Regional Office located in Sacramento, California, and the local area office. Our practice is to make comments, including

names and home addresses of respondents, available for public review.

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If you wish to review a copy of these Plans, please contact Ms. Laurie Sharp to find the office nearest you.

Dated: July 28, 2009.

Richard J. Woodley,

Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. E9–22395 Filed 9–16–09; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2009–N189; 20124–1113–0000–F5]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under the Endangered Species Act of 1973, as amended (Act). The Act requires that we invite public comment on these permit applications.

DATES: To ensure consideration, written comments must be received on or before October 19, 2009.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 6034, Albuquerque, NM 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW., Room 6034, Albuquerque, NM. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Endangered Species Division, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit TE–829996

Applicant: Houston Zoo, Houston, Texas.

Applicant requests an amendment to their current permit for research and recovery purposes to conduct presence/absence surveys of jaguarundi (*Felis yagouaroundi cacomitli*) within Texas.

Permit TE–051832

Applicant: The Phoenix Zoo, Phoenix, Arizona.

Applicant requests an amendment to a current permit to capture and breed Mt. Graham red squirrels (*Tamiasciurus hudsonicus grahamensis*) to be held in the zoo and eventually released back into the wild.

Permit TE–225730

Applicant: Scott Cutler, El Paso, Texas.

Applicant requests a new permit for education purposes to display skeletons and skins of salvaged California condors (*Gymnogyps californianus*) at the Centennial Museum within the University of Texas at El Paso.

Permit TE–226653

Applicant: The Arboretum at Flagstaff, Flagstaff, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of the following plants: sentry milk-vetch (*Astragalus cremnophylax var. cremnophylax*), Mancos milk-vetch (*Astragalus humillimus*), Arizona cliffrose (*Purshia subintegra*), and autumn buttercup (Ranunculus aestivalis) within New Mexico, Arizona, and Utah.

Permit TE–192855

Applicant: Amnis Opes Institute, LLC., Cornvallis, Oregon.

Applicant request a new permit for research and recovery purposes to conduct presence/absence surveys of humpback chub (*Gila cypha*) within the Colorado River, Arizona.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: September 10, 2009.

Brian Millsap,

Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. E9–22377 Filed 9–16–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2009–N190; 30120–1113–0000–F6]

Endangered and Threatened Wildlife and Plants; Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

DATES: We must receive any written comments on or before October 19, 2009.

ADDRESSES: Send written comments to the Regional Director, Attn: Peter Fasbender, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, MN 55111–4056; electronic mail, *permitsR3ES@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Peter Fasbender, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Background

We invite public comment on the following permit applications for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species in the Code of Federal Regulations at 50 CFR 17. Submit your written data, comments, or request for a copy of the complete application to the address shown in **ADDRESSES**. When submitting comments, please refer to the appropriate permit application number.

Permit Applications

Permit Application Number: TE224720

Applicant: ABR, Inc., Environmental Research & Services, Forest Grove, Oregon.

The applicant requests a permit to take (harass through capture and release; collection of hair and tissue samples) Indiana bats (*Myotis sodalis*) and gray bats (*Myotis grisescens*) throughout the States of Indiana, Iowa, Illinois, Michigan, Missouri, Ohio, and Wisconsin. Proposed activities under this permit application include surveys to document species' presence or absence in areas proposed for wind-energy development, studies to document habitat use, collection of echolocation data and hair/tissue sampling for scientific research. The applicant's proposed activities are aimed at enhancement of the survival of the species in the wild.

Permit Application Number: TE224719

Applicant: Richard B. King, DeKalb, Illinois.

The applicant requests renewal of a permit to take the Lake Erie water snake (*Nerodia sipedon insularum*) in the State of Ohio. Proposed activities include capture and release of snakes, insertion of PIT tags or radio transmitters, blood sampling, stomach sampling, and temporarily holding snakes for scientific study or public exhibition. These proposed activities are for enhancement of the survival of the species in the wild.

Permit Application Number: TE226335

Applicant: Michael C. Quist, Ames, Iowa.

The applicant requests a permit to take the Topeka shiner (*Notropis topeka*) in the State of Iowa. Proposed activities include capture and release to determine presence or absence of the species and to study species' distribution. The applicant also proposes to take voucher specimens to document presence of the species in formerly undocumented sites or in sites where documentation is over 20 years old. These proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE195082–1

Applicant: Thomas E. Tomasi, Springfield, Missouri.

The applicant requests an amendment to his permit to add Virginia big-eared bats (*Corynorhinus townsendii virginianus*) to the list of species covered by the permit. In addition, this amendment request seeks authorization to capture and temporarily hold Virginia big-eared bats and gray bats at Missouri State University for a period of five months during hibernation. Bats are proposed to be captured from caves in Missouri and Kentucky and will be returned unharmed to point of capture at the end of the hibernation period. The proposed research activity is aimed at enhancement of survival of the species in the wild.

Public Comments

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown in the **ADDRESSES** section. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Dated: September 11, 2009.

Lynn M. Lewis,

Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. E9–22375 Filed 9–16–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2009–N104; 40136–1265–0000–S3]

Buck Island, Green Cay, and Sandy Point National Wildlife Refuges, U.S. VI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Buck Island, Green Cay, and Sandy Point National Wildlife Refuges for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage these three refuges for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we must receive your written comments by October 19, 2009.

ADDRESSES: Send comments, questions, and requests for information to: Mr. Michael Evans, Refuge Manager, Sandy Point National Wildlife Refuge, 3013 Estate Golden Rock, Christiansted, VI 00820; *telephone:* 340/773–4554. The Draft CCP/EA is also available at the *Service's Internet Site: http://southeast.fws.gov/planning/*.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Evans; *telephone:* 340/773–4554; *e-mail: michael_evans@fws.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Buck Island, Green Cay, and Sandy Point National Wildlife Refuges. We started the process through a notice in the **Federal Register** on March 12, 2007 (72 FR 11046).

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

All three refuges are located in the U.S. Virgin Islands. Buck Island NWR is situated several miles south of the island of St. Thomas and the city of Charlotte Amalie. Green Cay NWR is a small island located several hundred yards north of the island of St. Croix and east of the city of Christiansted. Sandy Point NWR is situated on the southwestern tip of the island of St. Croix. These three refuges are part of the larger Caribbean Islands NWR Complex.

Buck Island NWR was established in 1969. The refuge consists of the entire 45-acre island. The refuge extends to sea level and does not include submerged or marine habitat. In 1969, we obtained approximately 35 acres of the island from the U.S. Navy. In 1981, we obtained an additional 9 acres from the U.S. Coast Guard. In 2004, the final parcel, 0.92-acre, which included the historic iron lighthouse, was obtained from the U.S. Coast Guard. The purpose for establishment of the refuge was its particular value in carrying out the national migratory bird management program.

The off-shore islands around St. Thomas support a number of critical seabird and migratory bird roosting, breeding, and nesting sites. Some of these off-shore islands have been impacted by varying degrees of development and habitat alteration, making remaining islands even more critical for use by migratory birds. Although Buck Island NWR's natural plant and wildlife communities have been severely impacted by human activity, the island has major potential for habitat restoration, enhancement and support of migratory bird populations, and maintenance of existing wildlife populations, both endemic and migratory. The refuge is home to two rare reptiles endemic to the ''Puerto Rican Bank,'' the geological area containing Puerto Rico, Culebra, St. Thomas, and the British Virgin Islands—the Antillean skink and Puerto Rican racer. The island also provides nesting habitat for the magnificent frigatebird, the red-billed tropicbird, and the laughing gull.

Green Cay NWR, in St. Croix, was established in 1977 to protect the federally endangered St. Croix ground lizard. The refuge consists of the entire 14-acre island of Green Cay. The establishing purpose was to conserve fish or wildlife listed as threatened or endangered species. The refuge extends only to sea level and does not include any of the submerged marine habitat, including coral reefs. Outcrops of lava, tuffs, and breccias are prominent terrestrial geological features. Archaeological conch shell middens (*e.g.,* discarded conch shells) once occurred on the shoreline. Estimated to contain as many as 33,000 shells, these middens demonstrated 1,000 years of human use or occupancy, dating back to as early as 1020 A.D.

Green Cay NWR provides critical habitat for the largest remaining natural population of the St. Croix ground lizard. Its extirpation from the main island of St. Croix, just several hundred yards away, is generally attributed to the modification and loss of shoreline habitat, resulting from human activities and the introduction of predators, such as rats, cats, and dogs. The introduction of the exotic Indian mongoose likely completed the elimination of the species from St. Croix. As a result, this species is one of the rarest reptiles in the world and is unique to St. Croix island ecosystems.

Sandy Point NWR, in St. Croix, includes 383 acres, with no inholdings. The refuge's establishing purpose was to conserve fish or wildlife (including plants) listed as threatened or endangered species. The refuge was established in 1984 when 340 acres were purchased from the West Indies Investment Company. The land was purchased specifically to protect the nesting habitat of endangered leatherback sea turtles. An additional 43 acres have been acquired since that time to protect the Aklis archaeological site and a stand of the endangered Vahl's boxwood tree.

Sandy Point NWR provides critical nesting habitat for three species of federally threatened and endangered sea turtles. The leatherback and hawksbill sea turtles are federally listed as endangered species, and the green sea turtle is federally listed as a threatened species. These same sea turtle species are also protected under Territory of the U.S. Virgin Islands regulations.

The leatherback is the largest sea turtle species in the world, and the largest nesting population within U.S. jurisdiction occurs on Sandy Point NWR. The leatherback sea turtle recovery program began on Sandy Point NWR, with tagging efforts in 1977, and has since developed into one of the most unique, long-term sea turtle research and recovery efforts in the world. The program is a cooperative effort between partnering agencies, researchers, non-governmental organizations, and volunteers. This work has resulted in a leatherback sea turtle population that has grown consistently over the last 27 years, and a scientific database that has documented this population growth. This unique database is critical for leatherback sea turtle population recovery world-wide.

Significant issues addressed in the Draft CCP/EA include: (1) Protection and recovery of threatened and endangered species; (2) habitat management and restoration; (3) appropriate and compatible levels of public use; (4) protection of cultural and historic resources, including archaeological sites (Sandy Point and Green Cay NWRs); (5) historic structures (Buck Island NWR); (6) invasive species management; and (7) funding and staffing.

CCP Alternatives, Including Our Proposed Alternatives

We developed four alternatives for managing Sandy Point NWR, and two alternatives each for managing Green Cay and Buck Island NWRs. For Sandy Point NWR, we chose Alternative D as the proposed alternative. For both Green Cay and Buck Island NWRs, we chose Alternative B as the proposed alternative. A full description of each alternative is found in the Draft CCP/EA. We summarize each alternative below.

Sandy Point NWR

Alternative A—Current Management (No Action Alternative)

Under Alternative A, Sandy Point NWR would continue to be managed as it is today. Wildlife management, habitat management, public use, and visitor services would remain unchanged. The overall management emphasis of the refuge would continue to be the recovery of populations of threatened and endangered animals.

With regard to recovery efforts on behalf of the endangered leatherback sea turtle, we would maintain the seasonal beach closure now in effect, as well as saturation tagging and nest management. Nighttime beach closures to protect adult leatherback turtles and nests and monitoring of nesting turtles would also continue. We would maintain current nest management efforts and the flexible seasonal closure on the entire beach during prime turtle nesting season to optimize hatchling production on the beach.

Existing hawksbill and green sea turtle recovery programs would be continued. We would maintain both tagging of hawksbill and green sea turtles during the leatherback sea turtle nesting season, as well as regular daytime track surveys of both species. Brown pelican recovery efforts would continue by protecting roosting sites and minimizing potential for disturbance by visitors. We would

continue to monitor, manage, protect, and enhance least tern nesting sites on the refuge.

We would continue to conserve, enhance, and restore habitats for various landbirds, shorebirds, and waterbirds. However, due to staffing limitations and the need for management priorities, there would not be active management for, or surveys of, reptiles, amphibians, bats, or invertebrates. In order to control invasive animal species, we would continue with selective trapping of non-native mammals, such as dogs, cats, mongoose, and rats, as needed to protect indigenous fauna.

We would continue to manage habitats. Existing dry forest habitats would continue to be protected. We would continue to protect the small population of Vahl's boxwood (*Buxus vahlii*) on the refuge. However, there would be no active management of other endangered plants and no active monitoring of sea level rise and its effects on beach and lagoon habitats. Invasive plants would continue to be controlled periodically.

We would continue to manage cultural resources, particularly the significant Aklis archaeological site, consistent with section 106 of the National Historic Preservation Act. No excavation associated with construction would be permitted at or near the site; however, no additional efforts would be undertaken to prevent further natural beach erosion from affecting the site.

Public uses and visitor services on the refuge would not change. Shoreline fishing would be permitted on the refuge during its open hours. Existing opportunities would continue for controlled observation of nesting leatherback turtles and hatchlings, as well as limited opportunities for bird watching. Environmental education and interpretation would be maintained, including the turtle watch education program.

We would complete and open the new refuge headquarters to the public as a visitor contact station. Beach access would continue from 10 a.m. to 4 p.m. on weekends, outside of the seasonal closure for leatherback sea turtle nesting. We would continue the existing education and outreach programs, such as the sea turtle watch program, Youth Conservation Corps program, periodic news releases, news media interviews, Web site content, school visits, and informal face-to-face contact with refuge visitors.

We would maintain the current permanent staff of two (refuge manager and refuge biologist) and a fluctuating number of temporary employees. Existing facilities and equipment would be maintained and replaced when necessary, but there would be no expanded facilities, infrastructure, and equipment.

Alternative B—Expanded Visitor Opportunities

Alternative B would emphasize expanded visitor opportunities and public use. The refuge would eliminate its seasonal beach closure (and allow the public to frequent the beach year-round on weekends during daylight hours), but continue saturation tagging of leatherback turtles, though with reduced nest management. We would continue nighttime beach closures to protect turtles and nests from poaching and predation, and we would also continue to monitor nesting turtles.

The refuge would continue with nighttime closures to protect sea turtles and nests and to monitor nesting turtles. To protect hawksbill and green sea turtles, we would continue tagging during the leatherback sea turtle nesting and monitoring season and we would also continue regular daytime track surveys.

Some visitor access to the vicinity of brown pelican roosting sites would be permitted, such as watercraft in the Salt Pond. Similarly, some visitor access to the vicinity of least tern nesting sites would also be permitted, but the refuge biologist would continue to monitor and manage tern nests.

Under Alternative B, as under Alternative A, we would continue to conserve, enhance, and restore habitats for landbirds, shorebirds, and waterbirds. Unlike Alternative A, some visitor access to the vicinity of feeding and nesting habitats would be permitted.

There would be no active management for, or surveys of, reptiles, amphibians, bats, or invertebrates on the refuge under Alternative B, just as under Alternative A. We would, however, continue with selective trapping of non-native mammals as needed to protect indigenous fauna.

With regard to habitat management, Alternative B is almost identical to Alternative A. The refuge would implement custodial management of its dry forest habitat, that is, there would be no effort to restore native forest biodiversity. Concerning wetlands, watercraft would be allowed in a portion of the Salt Pond. We would continue to protect Vahl's boxwood specimens, but there would be no active management of other endangered plants and no active monitoring of sea level rise associated with climate change and global warming. Nonetheless, we would continue to periodically control invasive vegetation.

We would continue to manage cultural resources, particularly the Aklis archaeological site, consistent with section 106 of the National Historic Preservation Act. The refuge manager and at least one other staff person would continue to provide law enforcement as a collateral duty.

We would adopt and begin to implement a Visitor Services Plan. This plan would provide more specific direction on increasing visitor services and facilities to accommodate expanded public use. Shoreline fishing opportunities would be expanded. Likewise, there would be expanded opportunities for wildlife observation and photography by constructing one or more trails, observation deck(s), and camera blind(s). Environmental education and interpretation opportunities would also increase.

Within the 15-year life of the CCP, we would expand the headquarters and visitor contact station or a nearby site into a full-fledged visitor center, including exhibits and a theatre. Concerning beach access, we would allow pedestrian access to the beach from 10 a.m. to 4 p.m. on weekends during the entire year; the beach would continue to be closed weekdays because of our inability to patrol it during that time.

Adding a park ranger position would allow us to increase education and outreach efforts. We would collaborate with the Virgin Islands Network of Environmental Educators in these efforts. We would also expand the Youth Conservation Corps (YCC) program to include more participants. In addition, we would expand our partnerships and encourage development of a Friends of Sandy Point NWR organization—a volunteer organization that could assist the refuge in a number of ways.

Under Alternative B, we would add a park ranger to address expanded outreach and environmental education and interpretation programs.

Alternative C—Exclusive Biological Program Emphasis

Under Alternative C, we would exclusively emphasize the biological program. Visitor services would be downplayed and public use reduced in order to focus on the refuge's primary purpose of restoring local populations of threatened and endangered species. The most salient feature of this alternative is a year-round refuge closure. Except for the headquarters and visitor contact station near the refuge entrance, the refuge would be closed to the public all

year, as is the case at Green Cay NWR, in order to protect highly sensitive species of fauna.

With regard to recovery efforts on behalf of the endangered leatherback sea turtle, this alternative would be identical to current management direction (Alternative A). We would maintain and extend the beach closure now in effect, as well as saturation tagging nest management. Nighttime beach closures to protect adult leatherback sea turtles and nests and monitoring of nesting turtles would also continue. We would maintain current nest management efforts, as well as the beach closure to optimize leatherback hatchling production.

To encourage recovery of the hawksbill and green sea turtles, we would begin saturation tagging and nest management, in addition to the year-round closure.

Efforts on behalf of brown pelican recovery would be the same as under Alternative A. In addition, we would implement a year-round refuge closure to increase least tern nesting by greatly reducing the potential for disturbance. The year-round refuge closure would also reduce the potential for disturbance of landbirds, shorebirds, and waterbirds. In addition, we would upgrade the quality and increase native biodiversity of upland forests and wetlands to benefit landbirds, shorebirds, and waterbirds.

We would begin to conduct status surveys for reptile and amphibian species of special concern, including bats and invertebrates. Bats would further benefit from habitat enhancement and installation of artificial nest structures. We would implement refuge-wide control of non-native animals to protect indigenous fauna.

Alternative C would accelerate efforts to restore the structure, function, and diversity of dry forest habitat. We would begin to actively monitor status and trends on Salt Pond as they affect mangroves, wetlands, and wildlife habitat. We would not only protect existing stands and specimens of Vahl's boxwood, but would also conduct recovery activities, such as nursery germination and planting. With respect to other endangered plants, we would investigate the potential for establishing a *Catesbaea melanocarpa* population on the refuge.

We would actively cooperate with the U.S. Geological Survey and other agencies to develop and implement protocols for monitoring sea level rise and its impacts on habitats. Also, we would develop and begin to implement a step-down management plan on invasive plant control.

Alternative C would continue to protect cultural resources, particularly the Aklis archaeological site, consistent with section 106 of the National Historic Preservation Act.

Visitor services would be sharply reduced. Except for the headquarters and visitor contact station, the refuge would be closed to all public uses, including the priority public uses of the Refuge System (*e.g.*, hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation). Environmental education and interpretation, while eliminated on the refuge proper, would continue off-refuge (*e.g.*, schools and other facilities) or in the visitor contact station.

No visitor center would be necessary under Alternative C, and we would implement and enforce a year-round beach closure. However, we would increase education and outreach efforts, and in part reorient them to explain the value of a complete refuge closure. We would also collaborate with the Virgin Islands Network of Environmental Educators. The YCC program would be continued, but operations would be restricted to biological programs related to habitat enhancement and wildlife population recovery.

Under Alternative C, developing partnerships and volunteers would be the same as under Alternative B. We would expand existing partnerships and encourage development of a Friends of Sandy Point NWR organization. Staffing would be the same as under Alternative A. We would maintain a permanent, full-time staff of two and fluctuating temporary staff. In terms of facilities and equipment, Alternative C would add a maintenance facility.

Alternative D—Enhanced Biological and Visitor Service Programs (Proposed Alternative)

Alternative D would endeavor to enhance both the biological and visitor service programs at Sandy Point NWR. This alternative is our proposed alternative.

Recovery efforts for the endangered leatherback sea turtle would be the same as under Alternative A. We would maintain the seasonal beach closure now in effect, as well as saturation tagging and nest management. Nighttime beach closures to protect adult leatherback sea turtles and nests and monitoring of nesting sea turtles would also continue. We would maintain current nest management efforts and the flexible seasonal closure on the entire beach, during the prime sea turtle nesting season, to optimize leatherback hatchling production on the beach.

Alternative D would pursue both hawksbill and green sea turtle recovery by implementing saturation tagging and nest management. Unlike Alternative C, Alternative D would not entail year-round beach closure, but would maintain the current schedule.

We would continue to protect pelican roosting sites by minimizing the potential for disturbance by visitors. Alternative D would manage least terns by continuing to monitor, manage, protect, and enhance least tern nesting sites on the refuge; the aim would be to increase the number of least terns nesting here through various steps.

Alternative D would benefit landbirds, shorebirds, and waterbirds by upgrading the quality and increasing the native biodiversity of upland forests and wetlands to benefit landbirds. Alternative D would not implement a year-round refuge closure to reduce potential for disturbance of these species.

We would begin to conduct status surveys for reptile and amphibian species of special concern. The presence or absence of bats would also be surveyed, and we would undertake habitat enhancement and installation of artificial nest structures for bats. We would begin to conduct status surveys for invertebrates. Refuge-wide control of non-native animals to protect indigenous fauna would be carried out as needed.

We would accelerate efforts to restore the structure, function, and diversity of dry forest habitat. We would begin to actively monitor status and trends on the Salt Pond as they affect mangroves, wetlands, and wildlife habitat. We would not only protect existing stands and specimens of Vahl's boxwood, but would also conduct recovery activities, such as nursery germination and planting. With respect to other endangered plants, we would investigate the potential for establishing a *Catesbaea melanocarpa* population on the refuge.

We would actively cooperate with the U.S. Geological Survey and other agencies to develop and implement protocols for monitoring sea level rise and its impacts on habitats. Also, we would develop and begin to implement a step-down management plan on invasive plant control.

We would continue to manage cultural resources, particularly the Aklis archaeological site, consistent with section 106 of the National Historic Preservation Act. In addition, under this alternative and within 15 years of CCP

approval, we would develop and begin to implement a Cultural Resources Management Plan.

The refuge manager and at least one other staff person would continue to provide law enforcement as a collateral duty in Alternative D. Public use and visitor services would expand somewhat, though not as much as under Alternative B, with its visitor emphasis. A Visitor Services Plan would be prepared. Shoreline fishing opportunities would expand. Two other priority public uses of the National Wildlife Refuge System (*e.g.*, wildlife observation and wildlife photography) would also expand. The refuge would develop an accessible trail and observation deck, with expansive views of the Salt Pond.

Both environmental education and interpretation would increase. We would aim to develop environmental education and interpretation opportunities around the new refuge headquarters and visitor center, which would be constructed in the vicinity. We would also establish an interpretive trail near the visitor contact station and visitor center and would expand the information and educational opportunities available at both facilities.

Alternative D would continue to allow access to the beach from 10 a.m. to 4 p.m. on weekends, outside of seasonal closure for leatherback sea turtle nesting. If staffing permits, this alternative would also provide pedestrian access to the beach during the week from 9 a.m. to 5 p.m., outside of the seasonal closure for turtle nesting.

We would continue the existing education and outreach program, such as the turtle watch program, YCC program, periodic news releases, news media interviews, Web site content, school visits, informal face-to-face contact with refuge visitors, and continuing development of the visitor contact station. Education and outreach efforts would increase. We would collaborate with the Virgin Islands Network of Environmental Educators to augment and extend our efforts related to the resources of the refuge and the issues it faces.

The YCC program would be maintained for two months during the summer. We would aim to expand the YCC program to include more participants than the 4 to 5 at present. Existing partnerships would continue, and we would attempt to expand on existing partnerships and encourage development of a Friends of Sandy Point NWR organization.

Alternative D would maintain the permanent, full-time staff of two and fluctuating temporary staff and add a total of four permanent, full-time positions to include an assistant refuge manager, a park ranger, a maintenance worker, and an administrative assistant. We would maintain the new headquarters, greenhouse, road, storage facilities, three vehicles, farm tractor, one zodiac, and one Navy johnboat. Within 15 years of CCP approval, Sandy Point NWR would add a visitor center distinct from, but close to, the refuge headquarters and maintenance facility.

Green Cay NWR

Alternative A—Continue Current Management (No Action Alternative)

Under Alternative A, current management direction would be maintained at Green Cay NWR. To promote recovery of the endangered St. Croix ground lizard, we would continue existing programs of reforestation and rat and invasive plant control and population monitoring. We would also maintain closure of the island to public access to avoid the accidental direct mortality and habitat degradation this might cause.

With regard to brown pelicans and white-crowned pigeons, we would continue to monitor, protect, and minimize disturbance to rookery and nesting sites.

Habitat recovery efforts would proceed as at present. As resources permit, we would continue to reforest the island, using native tree species. An important part of habitat recovery would involve control of invasive species of plants and animals that damage habitat.

Under Alternative A, we would continue to manage Green Cay NWR's cultural resources consistent with section 106 of the National Historic Preservation Act.

To conduct outreach and education, we would continue to maintain the refuge Web site, distribute information, maintain limited signage on the island identifying it as a national wildlife refuge closed to the public, and conduct periodic presentations off-refuge.

Alternative B—Proposed Alternative

In general, Alternative B would maintain all programs of Alternative A and build on or expand them. This is the Service's proposed alternative for managing Green Cay NWR.

To promote recovery of the endangered St. Croix ground lizard, as under Alternative A, Alternative B would continue existing programs of reforestation and rat and invasive plant control and population monitoring. We would also maintain closure of the island to public access to avoid the accidental direct mortality and habitat degradation this might cause. In addition, Alternative B would develop a habitat restoration plan within 3 years of CCP approval, with the aim of improving habitat for the ground lizard.

With regard to brown pelicans and white-crowned pigeons, we would continue to monitor, protect, and minimize disturbance to rookery and nesting sites. On behalf of both of these bird species, we would accelerate reforestation efforts to increase optimal nest sites.

Habitat recovery efforts would proceed, but at an accelerated rate from the present one. We would also aim to increase the rate of reforestation so as to complete 100 percent of the area intended for reforestation by the end of the 15-year planning period. An important part of accelerating habitat recovery would be to increase the control of invasive plants and animals. We would also evaluate the effectiveness of different methods of control to ensure that what we are doing works and to make modifications in the approach as indicated.

Under Alternative B, we would continue to manage Green Cay NWR's cultural resources consistent with section 106 of the National Historic Preservation Act. Also, we would develop and begin to implement a Cultural Resources Management Plan.

To conduct outreach and education, we would continue to maintain the refuge Web site, distribute information, maintain signage on the island identifying it as a national wildlife refuge closed to the public, and conduct periodic presentations off-refuge. Under Alternative B, these efforts would be augmented by installing larger signs that could be seen and read from a greater distance, expanding outreach efforts to nearby hotels, and considering alternatives to visitation within the refuge itself, such as offering or promoting boat and kayak tours around the island.

Buck Island NWR

Alternative A—Continue Current Management (No Action Alternative)

Under Alternative A, current management direction would be maintained at Buck Island NWR. Staff for the refuge would continue to be based out of Sandy Point NWR on St. Croix.

There would continue to be no active management of the Antillean skink, Puerto Rican racer, or other herptiles. Nor would there be active management of the magnificent frigatebird and the red-billed tropicbird.

We would continue to monitor for rat reinvasions, after having eliminated rats from the island several years ago in an active trapping program. Other than controlling invasive species such as rats, we would not conduct any active habitat restoration on the island. There would be no active control program for invasive plant species.

We would continue to manage cultural resources, particularly the historic lighthouse, consistent with section 106 of the National Historic Preservation Act.

We would continue to maintain the refuge Web site, distribute information, maintain limited signage on the island, and make periodic presentations off-refuge, primarily on St. Thomas.

Partnerships and volunteers would remain important to the refuge. We would continue to cooperate with the Virgin Islands Department of Planning and Natural Resources on joint wildlife and habitat management efforts for Buck Island and adjacent Capella Island.

Alternative B—Proposed Alternative

In general, Alternative B would maintain all programs of Alternative A and build or expand upon them. This is our proposed alternative for managing Buck Island NWR.

Under Alternative B, we would strive to provide more active management of the island's indigenous wildlife, particularly species of concern. Within 5 years of CCP approval, we would draft and begin to implement an inventorying and monitoring plan for the Antillean skink, Puerto Rican racer, magnificent frigatebird, and red-billed tropicbird.

We would continue to monitor for rat reinvasions. To pursue and promote habitat recovery on Buck Island, we would develop and begin to implement a habitat restoration plan within 5 years of CCP approval. We would aim to increase control of invasive plants and animals and evaluate the effectiveness of different methods of control.

Under this alternative, we would continue to manage cultural resources, particularly the historic lighthouse, consistent with section 106 of the National Historic Preservation Act. However, within 5 years of CCP approval, we would also evaluate the condition and safety of the historic lighthouse and decide on the feasibility of preservation or restoration. In addition, we would develop and begin to implement a Cultural Resources Management Plan.

With regard to conducting outreach and education, we would continue to maintain the refuge Web site, distribute information, maintain limited signage on the island, and make periodic presentations off-refuge.

Partnerships and volunteers would remain important to the refuge. We would continue to cooperate with the Virgin Islands Department of Planning and Natural Resources on joint wildlife and habitat management efforts for Buck Island and adjacent Capella Island. Also, Alternative B would expand cooperative education and interpretive efforts with the city of Charlotte Amalie and ecotourism companies, which bring visitors to offshore waters to explore coral reefs. We would also explore development of a Friends Group to provide a more active management presence on the island.

Next Step

After the comment period ends, we will analyze the comments and address them.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

June 22, 2009.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E9–22379 Filed 9–16–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS0100.L51010000.ER0000. LVRWF09F8770; NVN–085077 and NVN–085801; 09–08807; TAS: 14X5017]

Notice of Reopening of Public Comment Period To Prepare an Environmental Impact Statement for the Proposed NextLight Renewable Power, LLC, Silver State North and Silver State South Solar Projects, Primm, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is reopening the public comment period to prepare an Environmental Impact Statement (EIS) for the Proposed NextLight Renewable Power, LLC, Silver State North Solar Project and Silver State South Solar Project, to be located in Clark County, Nevada. A notice published in the **Federal Register** on June 30, 2009 [74 FR 31306] provided for a public comment period ending on July 30, 2009.

DATES: On publication of this notice an additional 30-day scoping period will open for comments through October 19, 2009. Comments received during the interim time between scoping periods will be accepted.

ADDRESSES: Submit comments related to the project by any of the following methods:

- *E-mail:* *Nextlight_Primm_NV_SEP@blm.gov*.
- *Fax:* (702) 515–5010, Attn: Gregory Helseth.
- *Mail:* BLM, Las Vegas Field Office, Attn: Gregory Helseth, 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301.

FOR FURTHER INFORMATION CONTACT: Gregory Helseth, Renewable Energy Project Manager, (702) 515–5173; or e-mail *Nextlight_Primm_NV_SEP@blm.gov*. (Authority: 43 CFR Part 2800)

Ron Wenker,

State Director, Nevada.

[FR Doc. E9–22434 Filed 9–16–09; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS03000.L51010000.ER0000.F09F8590; NVN–84359; 9–08807: TAS:14X5017]

Notice of Reopening of Public Comment Period To Prepare an Environmental Impact Statement for the Proposed Solar Millennium, LLC, Amargosa Farm Road Solar Energy Project, Nye County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is reopening the public comment period to prepare an Environmental Impact Statement (EIS) for the Proposed Solar Millennium, LLC, Amargosa Farm Road Solar Energy Project. A notice published in the **Federal Register** on Monday, July 13, 2009 [74 FR 33458] provided for a

public comment period ending on August 12, 2009.

DATES: On publication of this notice an additional 30-day scoping period will open for comments through October 19, 2009. Comments received during the interim time between scoping periods will be accepted.

ADDRESSES: Submit comments related to the project by any of the following methods:

- *E-mail: solar_millennium@blm.gov*.
- *Fax:* (702) 515–5023, *Attn:* Gregory Helseth.
- *Mail:* BLM, Las Vegas Field Office, *Attn:* Gregory Helseth, 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301.

FOR FURTHER INFORMATION CONTACT: Gregory Helseth, Renewable Energy Project Manager, at (702) 515–5173; or e-mail at *solar_millennium@blm.gov*.

(Authority: 43 CFR Part 2800)

Ron Wenker,

State Director, Nevada.

[FR Doc. E9–22441 Filed 9–16–09; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2009-N194; 96300-1671-0000-P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for permits to conduct certain activities with endangered species and/or marine mammals. Both the Endangered Species Act and the Marine Mammal Protection Act require that we invite public comment on these permit applications.

DATES: Written data, comments or requests must be received by October 19, 2009].

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358-2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358-2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Submit your written data, comments, or requests for copies of the complete applications to the address shown in **ADDRESSES**.

Applicant: Gibbon Conservation Center, Santa Clarita, CA, PRT-226717

The applicant requests a permit to export one female captive-born northern white-cheeked gibbon (*Nomascus leucogenys*) to the Parc Zoologique et Botanique de Mulhouse, France for the purpose of enhancement of the species through captive breeding.

Applicant: Hollywood Animals, Los Angeles, CA, PRT-060470, PRT-060472, and PRT-060473

The applicant requests permits to re-export and re-import three captive-born leopards (*Panthera pardus*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: PRT-060470, Sheena; PRT-060472, Whoopi; and PRT-060473, Satchmo. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Applicant: Louisiana State University - LSU Museum of Natural Science, Baton Rouge, LA, PRT-003005

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species of animals previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Vance S. Johnson, North Myrtle Beach, SC, PRT-226642

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Submit your written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications to the address shown in **ADDRESSES**. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: U.S. Geological Survey, Anchorage, AK, PRT-801652

The applicant requests an amendment to their permit to increase the number of walruses (*Odobenus rosmarus*) that may be incidentally harassed by the already authorized activities for the purpose of scientific research. This notification covers activities to be conducted by the applicant over the remainder of their 5–year permit; we are considering amending the permit before the end of the public comment period because delaying the issuance of the permit would result in a loss of a unique research opportunity that is present at this time. We welcome and will consider all comments received regarding this request.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: September 11, 2009.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority

[FR Doc. E9–22423 Filed 9–16–09; 8:45 am]

BILLING CODE 4310–55–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–621]

In the Matter of Certain Probe Card Assemblies, Components Thereof and Certain Tested DRAM and NAND Flash Memory Devices and Products Containing Same; Notice of Commission Determination To Review a Final Initial Determination in Part and Set a Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on June 29, 2009, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3116. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on December 19, 2007, based on a complaint filed by FormFactor, Inc. (''FormFactor'') of Livermore, California. The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain probe card assemblies, components thereof, and certain tested DRAM and NAND flash memory devices and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 5,994,152; 6,509,751 (''the '751 patent''); 6,615,485; 6,624,648 (''the '648''patent); 7,168,162 (''the '162 patent''); and 7,225,538. The complaint named Micronics Japan Co., Ltd.; MJC Electronics Corp.; Phicom Corporation; and Phiam Corporation as respondents (collectively, ''Respondents''). Subsequently, the '162 patent was terminated from the investigation.

On December 5, 2008, respondents Phicom Corp. and Phiam Corp., (collectively, ''Phicom'') jointly filed a motion for partial summary determination that claims 20 and 34 of the '648 patent are invalid as indefinite under 35 U.S.C. 112. On February 11, 2009, the ALJ issued an ID by Order No. 46. The subject ID states that ''Phicom's motion * * * for summary determination that the '648 patent is invalid is * * * granted.'' The ID determines that claims 20 and 34, and any asserted claims depending therefrom, are invalid. Complainant FormFactor filed a petition for review of Order No. 46, which Respondents and the Commission investigative attorney oppose. On March 11, 2009, the Commission determined to review Order No. 46.

The evidentiary hearing in this investigation was held from February 24, 2009 through March 6, 2009. On June 29, 2009, the ALJ issued an Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond, finding no violation of section 337. All parties to this investigation, including the Commission investigative attorney, filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions.

Having examined the record in this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in part. In particular, the Commission has determined to review: (1) The ID's finding that Japanese Patent Application Publication H10–31034 to Amamiya *et al.* (''Amamiya'' or RX–166) does not anticipate the asserted claims of the '751 patent under 35 U.S.C. 102; (2) the ID's conclusion of law regarding non-infringement of the '751 patent by Phicom's accused products; (3) the ID's conclusion that no analysis of the validity of the asserted claims that depend from claim 21 of the '152 patent is needed. The Commission has determined not to review the remainder of the final ID.

On review, the Commission requests the parties to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. The Commission is particularly interested in responses to the following questions:

(1) With respect to the '751 patent:

(a) What, if any, limitations are missing from the Amamiya reference such that it does not render the asserted claims of the '751 patent invalid as anticipated?

(b) Is there support for the Commission investigative attorney's and Phicom's argument that Amamiya anticipates the asserted claims of the '751 patent, *inter alia,* by inherency? In answering this question, address paragraphs 0012 and 0013 on p. 6/8 of Amamiya.

(c) Is the ID's conclusion that there has been no violation of section 337 with respect to the '751 patent supported by its own findings?

(2) With respect to the '152 patent:

(a) Is the ID's statement that ''no analysis of the invalidity arguments related to anticipation and obviousness of the dependent claims will be made,'' ID at 191, consistent with the proper analysis under patent law? If not, what, if any, impact would such an error have on the ID's validity and infringement analyses as to the '152 patent?

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (Dec. 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S.

production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the expiration date of the '751 patent and state the HTSUS number under which the accused articles are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on September 25, 2009. Reply submissions must be filed no later than the close of business on October 2, 2009. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46).

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

Issued: September 14, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–22381 Filed 9–16–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on September 10, 2009, a proposed Consent Judgment in *United States* v. *Genesco Inc.* No. CV–09–3917, was lodged with the United States District Court for the Eastern District of New York.

The proposed Consent Judgment resolves certain claims of the United States, on behalf of the Environmental Protection Agency (''EPA''), under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.,* in connection with the Fulton Avenue Superfund Site located in and around the Village of Garden City Park in Nassau County, New York (''Site''), against defendant Genesco Inc. (''Genesco''). The proposed Consent Judgment requires Genesco to implement the interim groundwater extraction and treatment remedy contained in EPA's September 28, 2007 First Operable Unit (''OU1'') Record of Decision (''ROD'') for the Site.

The proposed Consent Judgment provides that Genesco is entitled to contribution protection as provided by section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2) for matters addressed by the settlement.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Genesco Inc.,* No. CV–09–3917, DOJ Ref. No. 90–11–2–09329.

The proposed Consent Judgment may be examined at the Office of the United States Attorney, Eastern District of New York, 610 Federal Plaza, Central Islip, New York 11722–4454. During the public comment period, the proposed Consent Judgment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Judgment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $46.50 (25 cents per page reproduction cost), payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–22350 Filed 9–16–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on August 19, 2009, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, H. Lundbeck A/S, Valby, Denmark; UPCO, Woking, United Kingdom; Rescentris, Columbus, OH; F. Hoffmann-La Roche LTD, Basel, Switzerland; Bristol-Myers Squibb, Princeton, NJ; KNIME.com GmbH,

Zurich, Switzerland; and DeltaSoft, Hillsborough, NJ have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 15, 2009 (74 FR 34364–01).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–22312 Filed 9–16–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division; Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on July 22, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), TeleManagement Forum (''the Forum'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 2operate ApS, Aalborg Ce, DENMARK; Access Commerce, Labege Cedex, FRANCE; Active Broadband Networks, Waltham, MA; Aijeel Aijadeed for Technology, Tripoli, LIBYA; Almadar Aljadid, Tripoli, LIBYA; ATG, REPUBLIC OF IRELAND; Atheeb Intergraph Saudi Co., Riyadh, SAUDI ARABIA; Boeing Company, Auburn, WA; Bridgewater Systems Corporation, Ottawa, Ontario, CANADA; BSM impact Limited, Reading, Berkshire, UNITED KINGDOM; Buddha Software, Palo Alto, CA; CircuitVision, Tampa, FL; ClassTel, Moscow, RUSSIA; Cotton Management Consulting, Friday Harbor, WA; CYTA (Cyprus Telecommunications Authority), Nicosia, CYPRUS; Directorate for Emergency Communication, Oslo, NORWAY; DUXDILIGENS, S.A. DE C.V., Ciudad de Mexico, Distrito Federal, MEXICO; EHF Consultoria, Santa Rita do Sapucai, MG, BRAZIL; EJADA, Riyadh, SAUDI ARABIA; EMGS Group, Riyadh, SAUDI ARABIA; Etiya Information Technologies, Kustepe Sisli, Istanbul, TURKEY; FTS, Herzliya, ISRAEL; Fundação Para Inovações Tecnologicas FITec, Recife, PE, BRAZIL; GenerationE Technologies, San Clemente, CA; GMS Consulting, Lisbon, PORTUGAL; Guavus, Inc., Sunnyvale, CA; Hollywood Mobile, Hollywood, CA; ICCE Systems, Cary, NC; IDS Scheer AG, Saarbrucken, GERMANY; iLink Systems, Redmond, WA; Incognito Software, Inc., Vancouver, British Colombia, CANADA; Inswitch Solutions, Miami, FL; IPLAN Networks, Buenos Aires, ARGENTINA; IXIA, Calabasa, ROMANIA; JSMN Inc, Cobh, Co. Cork, REPUBLIC OF IRELAND; Kara Consulting, ICT Solutions, Istanbul, TURKEY; Kron Telekomunikasyon A.S., Kavacik Istanbul, TURKEY; Libya for Telecom and Technology, Tripoli, LIBYA; Libyan International Telecommunication Company, Tripoli, LIBYA; Libyan Post, Telecommunication and Information Technology Co., Zawia St., Tripoli, LIBYA; Libyana for Mobile Phones, Tripoli, LIBYA; Macquarie Telecom, Pty. Ltd., Sydney, NSW, AUSTRALIA; Mint Systems Limited, Brighton, UNITED KINDGOM; Mobitel, d.d., Ljubljana, SLOVENIA; Multimedios Redes, Monterrey, MEXICO; Neoris, San Pedro Garza Garcia, MEXICO; Netezza Corporation, Marlborough, MA; Netformx, Inc., Santa Clara, CA; NetXForge, Amsterdam, THE NETHERLANDS; NORDUnet A/S, Kastrup, DENMARK; N–Pulse AG, Heppenheim, GERMANY; NuaTel, Cork, IRELAND; Objective Technologies SA, Athens, GREECE; Peoples Friendship University of Russia, Moscow, RUSSIA; Platinion GmbH, Koln, GERMANY; PT Bakrie Telecom, Jakarta, Selatan, INDONESIA; Revenue Assurance Consulting, Borehamwood, Hertfordshire, UNITED KINGDOM; Scartel Star Lab Ltd., St. Petersburg, RUSSIA; Seavus AS, Malmo, SWEDEN; Singer TC GmbH, Duesseldorf, GERMANY; SkyTerra Communications, Reston, VA; Smartlabs, Moscow, RUSSIA; Specinova Sistemi d.o.o., Ljubljana, SLOVENIA; Striata (Australia) Pty Ltd, Sydney, NSW, AUSTRALIA; Suntech Intelligent Solutions, Florianopolis, Santa Catarina, BRAZIL; Taseon, San Jose, CA; TDS Telecom, Chicago, IL; Tejas Networks Ltd, Bangalore, INDIA; The Business Realignment Company Ltd, Reading, Berkshire, UNITED KINGDOM; The Value Management Company, Caguas, PUERTO RICO; TouK sp. z o.o., Warszawa, POLAND; TRA, Manama, BAHRAIN; Transverse, Austin, TX; TTNet A.S. (Turkish TelLekom), Sisli/ ISTANBUL, TURKEY; Twinsec GmbH, Koln, GERMANY; University of Deusto—Deusto Technology Foundation, Bilbao, SPAIN; University of Stuttgart, Stuttgart, GERMANY; VOIPFUTURE, Hamburg, GERMANY; Wataniya Télécom Algérie S.P.A, Alger, ALGERIA, have been added as parties to this venture.

Also, 3G CLUB (Communication Leaders United Board), Taipei, TAIWAN; Acuma Solutions Limited, Manchester, UNITED KINGDOM; Adveotnet, Inc., Pleasanton, CA; Ahaluna, Rome, ITALY; Anglo African Outsourcing Ltd, Quatre Bornes, Plaine Wilhems, MAURITIUS; Asidua Limited, Belfast, UNITED KINGDOM; Auspice Corporation, Waltham, MA; Axiom Systems Limited, Readinq, Berkshire, UNITED KINGDOH; Bakcell LID, Baku, AZERBAIJAN; BEA Systems, Inc, Carmel Valley, CA; Beshara Group, Salmiyah, KUWAIT; Business Consulting Network, Santiago, CHILE; Cable & Wireless, Bracknell, Berkshire, UNITED KINGDOM; Central Research Instit. of Electrical Power Industry, Komae-Shi, Tokyo, JAPAN; Ceon Corporation, Redwood, CA; Codecentric GmbH, Solingen, GERMANY; CommProve Ltd, Dublin, REPUBLIC OF IRELAND; CTI—Communications. Technology. Innovations, Moscow, RUSSIA; CyberAccess, Inc., Chagrin Falls, OH; DataSynapse Inc., New York, NY; Datentechnik Austria GmbH & Co KG, Wien, AUSTRIA; EMBARQ, Overland Park, KS; Emnico Technologies Ltd, Westlea, Swindon, UNITED KINGDOM; Enterprise Architecture Consulting, Stadhampton, Oxfordshire, UNITED KINGDOM; Evidian, Los Clayes Sous Bois, FRANCE; FLAG Telecom, West Drayton, Middlesex, UNITED KINGDOM; Forthnet S.A., Kallithea, Attica, GREECE; Fusion Business Solutions, Hounslow, Middlesex, UNITED KINGDOM; Globus Consulting, Javea, Alicante, SPAIN; Grant Thornton Consulting Company Limited, Bangkok, THAILAND; Gridpoint Systems, Ottawa, Ontario, CANADA; GTA Consulting, Outremont, Quebec, CANADA; HTK Ltd, Ipswich, UNITED KINGDOM; lBS Consulting Group, Philadelphia, PA; Icesolutions, Ljubljana, SLOVENIA; IneoQuest Technologies, Inc, Mansfield, MA; Infotech Enterprises Europe, London, UNITED KINGDOM; Ingenium Technology, Monza, Milano, ITALY; Intec Telecom Systems PLC, Woking, Surrey, UNITED KINGDOM; Iowa

Communications Network, Des Moines, IA; iPass, Redwood Shores, CA; Iptivia, New York, NY; Ixonos Plc, Helsinki, FINLAND; Japan Cable and Telecommunications Association, Nishiotanda, Shinagawa-ku, Tokyo, JAPAN; Jet Infosystems, Moscow, RUSSIA; JSC ''IPNet'', Moscow, RUSSIA; Kentrox, Inc., Hillsboro, OR; Kornel Terplan, Hackensack, NJ; Men & Mice, Reykjavik, Iceland; Microtest Education Center, Moscow, RUSSIA; Neptuny, Milan, ITALY; New Generation Operations, London, England, UNITED KINGDOM; Oefeg, Wien, AUSTRIA; Omega—Reason Ltd., Islikon, Zurich, SWITZERLAND; Oy Swot Consulting Finland Ltd, Tampere, FINLAND; Packet Design Inc., Palo Alto, CA; PrismTech, Gateshead, Tyne & Wear, UNITED KINGDOM; Probity Consulting Ltd., Pretoria, Gauteng, SOUTH AFRICA; Psytechnics, Ipswich, Suffolk, UNITED KINGDOM; PT Excelcomindo Pratama Tbk, Jakarta, INDONESIA; RateIntegration, Durham, NC; Redline Communications, Inc., Markham, Ontario, CANADA; Sapient GmbH, Dusseldorf, NRW, Germany; Satorai Solutions, Inc., Arlington, VA; Sequoia Telecom Associates, San Rafael, CA; Sheerscape Inc, Austin, TX; Signiant, Inc., Burlington, MA; SNAP Solutions (M) Sdn Bhd, Kuala Lumpur, MALAYSIA; Steria Mummert Consulting AG, Langen, Hessen, GERMANY; Summa Telecom, Moscow, RUSSIA; Teleca Ltd, Didsbury, Manchester, UNITED KINGDOM; TelecomAdvisors International S.A., Panama City, PANAMA; Telelogic, New York, NY, have withdrawn as parties to this venture.

The following members have changed their names: Sunrise Telecom srl to Accanto Systems; Nordisk Mobiltelefon Sverige AB to AINMT Sverige AB; Sales Technologies to Aldous Limited; Technology Research Institute (TRI) to Aijeel aljadeed for Technology; Boeing to Boeing Company; Capgemini Telecom & Media to Capgemini Service (TME–GSA); Hong Kong CSL Limited to CSL Limited; auSystems Sweden South to Cybercom Sweden South; UNE EPM Telecomunicaciones to EPM Telecomunicaciones S.A. E.S.P; Tolmen, LLc to ICCE Systems; BearingPoint INFONOVA GmbH to Infonova; Iskratel Telekomunikacijski sistemi, d.o.o. to Iskratel, d.o.o., Kranj; LogicaCMG to Logica; Proforma Corporation to Metastorm; Ukrainian Mobile Communications UMC to MTS–Ukraine (UMC); Cadence LLC to Network Cadence; Andrew Network Solutions to Omnix Software ltd; RRD—Reti Radiotelevisive Digitali spa to RRD SRL–Reti Radiotelevisive Digitali Srl; Stratecast Partners to Stratecast—A division of Frost & Sullivan; Superna Business Consulting Inc to Superna Analytics, Inc.; Lifetree Convergence Ltd to Tecnotree; Tektronix to Tektronix Communications; TeliaSonera to TeliaSonera AB; TietoEnator Oyj to Tieto; Slovak telecom, a.s. to T–Slovak Telekom, a.s.; TeleSciences, Inc. to Ventraq, Inc.; Q/P Management Group of Canada to Woodward Systems Inc.

The following members have changed their addresses: Applied Broadband, Inc. to Boulder, CO; Atos Origin to Zurich, SWITZERLAND; Bell Canada to Montreal, Quebec, CANADA; Kyak Systems Ltd to London, UNITED KINGDOM; Toshiba Solutions Corporation to Minato-ku, Tokyo, JAPAN; Wisdom Networks Co.,Ltd. to Chiyoda-ku, Tokyo, JAPAN.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on January 16, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 26, 2009 (74 FR 13229).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–22318 Filed 9–16–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on August 3, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Network Centric Operations Consortium, Inc. (''NCOIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Institute for Defense Analyses, Alexandria, VA; NetCentOps Consulting, Wilmington, DE; Intelligent Integration, La Jolla, CA; Mangin, Inc., Arroyo Grande, CA; and Mark A. Wainwright (individual member), Nashua, NH have been added as parties to this venture. Also, PT Ltd., Diegem, BELGIUM has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCOIC intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, NCOIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(h) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on May 12, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 15, 2009 (74 FR 28277).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–22316 Filed 9–16–09; 8:45 am]

BILLING CODE 4410–11–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–079)]

NASA Advisory Council; Science Committee; Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Thursday, October 8, 2009, 8:45 a.m. to 5 p.m. and Friday, October 9,

2009, 9 a.m. to 4 p.m. Eastern Daylight Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 8R40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Astrophysics Division Update.

—Updates on Select Astrophysics Missions.

—Update on Education and Public Outreach.

—Discussion of Analysis Groups.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 7 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: September 11, 2009.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E9–22364 Filed 9–16–09; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025–COL and 52–026–COL; ASLBP No. 09–873–01–COL–BD01]

Atomic Safety and Licensing Board Panel; In the Matter of Southern Nuclear Operating Co. (Vogtle Electric Generating Plant, Units 3 and 4)

Before the Licensing Board: G. Paul Bollwerk, III, Chairman, Nicholas G. Trikouros, Dr. James F. Jackson.

September 11, 2009.

Memorandum and Order (Notice of Hearing)

This proceeding concerns the March 31, 2008 application of Southern Nuclear Operating Company (SNC) for a 10 CFR part 52 combined license (COL). That COL application (COLA) seeks approval for the construction and operation of two new AP1000 nuclear reactors at the existing Vogtle Electric Generating Plant (VEGP) site near Waynesboro, Georgia. In response to a September 10, 2008 notice of hearing and opportunity to petition for leave to intervene, [SNC], *et al.;* Notice of Hearing and Opportunity to Petition for Leave to Intervene and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation on a [COL] for the [VEGP] Units 3 and 4, 73 FR 53,446 (Sept. 16, 2008), on November 17, 2008, the Center for a Sustainable Coast, Savannah Riverkeeper, the Southern Alliance for Clean Energy, the Atlanta Women's Action for New Directions, and the Blue Ridge Environmental Defense League (collectively Joint Petitioners or Joint Intervenors) filed a timely request for hearing and petition for leave to intervene contesting the SNC COL application. On December 2, 2008, this three-member Atomic Safety and Licensing Board was established to preside over the contested portion of this COL proceeding.[1] *See* [SNC]; Establishment of Atomic Safety and Licensing Board, 73 FR 74,532 (Dec. 8, 2008).

On January 28, 2009, the Board conducted a one-day initial prehearing conference, with representatives of SNC and the NRC staff participating from Rockville, Maryland, and Joint Petitioners taking part via videoconference from Atlanta, Georgia, during which the Board heard oral presentations concerning the admissibility of Joint Petitioners three proffered contentions. The Board also requested additional statements of position from the participants, which the participants filed on February 24, 2009, regarding two potentially related Commission rulings and a ruling by a different licensing board on contentions similar to Joint Petitioners proffered issue statements. Thereafter, in a March 5, 2009 issuance, finding that each of the Joint Petitioners had established the requisite standing to intervene in this proceeding and that they had submitted one admissible contention concerning the SNC COLA, the Board admitted Joint Petitioners as parties to this proceeding. *See* LBP–09–03, 69 NRC _ (Mar. 5, 2009), *referred rulings declined,* CLI–09–13, 69 NRC _ (June 25, 2009), and *appeals denied,* CLI–09–16, 70 NRC _ (July 31, 2009).

In light of the foregoing, please take notice that a hearing will be conducted in this proceeding. Subject to any Board determination regarding any request to utilize formal hearing procedures under 10 CFR part 2, subpart G, *see* 10 CFR § 2.310(d), the hearing on contested matters will be governed by the informal hearing procedures set forth in 10 CFR part 2, subparts C and L, 10 CFR §§ 2.300–2.390, 2.1200–2.1213.

During the course of this contested proceeding, the Board may conduct an oral argument, as provided in 10 CFR § 2.331, may hold additional prehearing conferences pursuant to 10 CFR § 2.329, and may conduct evidentiary hearings in accordance with 10 CFR §§ 2.327–2.328, 2.1206–2.1208. The public is invited to attend any oral argument, prehearing conference, or evidentiary hearing. Notices of those sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC Web site, *http://www.nrc.gov.*

Additionally, as provided in 10 CFR § 2.315(a), any person not a party to the proceeding may submit a written limited appearance statement. Limited appearance statements, which are placed in the docket for this proceeding, provide members of the public with an

[1] In accord with section 189a(1)(a) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 189(a)(1)(a), and the Commission's September 10, 2009 hearing notice, *see* 73 FR at 53,446–47, a mandatory hearing also is required in this proceeding under which a presiding officer would receive evidence from the NRC staff and SNC regarding the sufficiency of the SNC COLA, and the staff's review of that application, with respect to safety and environmental matters that are not the subject of this contested hearing. Under current Commission policy, the Commission would preside over that uncontested adjudicatory proceeding. *See Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI–07–24, 66 NRC 38, 38 & n.2 (2007).

opportunity to make the Board and/or the participants aware of their concerns about matters at issue in the proceeding. A written limited appearance statement can be submitted at any time and should be sent to the Office of the Secretary using one of the methods prescribed below:

Mail to: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax to: (301) 415–1101 (verification (301) 415–1966).

E-mail to: hearing.docket@nrc.gov.

In addition, a copy of the limited appearance statement should be sent to the Licensing Board Chairman using the same method at the address below:

Mail to: Administrative Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, Mail Stop T–3F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax to: (301) 415–5599 (verification (301) 415–7550).

E-mail to: paul.bollwerk@nrc.gov.

Additionally, in conjunction with consideration of the then-pending SNC application for a 10 CFR part 52 early site permit (ESP) for proposed Units 3 and 4 on the VEGP site, on March 22 and 23, 2009, the Board conducted oral limited appearance statement sessions in Waynesboro, Georgia, during which members of the public provided the Board and the parties with their views regarding the ESP and COL proceedings. At a later date, the Board may conduct additional oral limited appearance sessions regarding this COL proceeding at a location, or locations, in the vicinity of the VEGP site. Notice of any oral limited appearance sessions will be published in the **Federal Register** and/or made available to the public at the NRC PDR and on the NRC Web site, *http://www.nrc.gov.*

Documents relating to this proceeding are available for public inspection at the Commission's PDR or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS, including its adjudicatory proceeding-related Electronic Hearing Docket, is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

It is so ordered.

Dated: September 11, 2009.

For the Atomic Safety and Licensing Board.[2]

G. Paul Bollwerk, III,

Chairman, Rockville, Maryland.

[FR Doc. E9–22383 Filed 9–16–09; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11868 and #11869]

New York Disaster Number NY–00079

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–1857–DR), dated 09/01/2009 .

Incident: Severe Storms and Flooding.

Incident Period: 08/08/2009 through 08/10/2009.

DATES: *Effective Date:* 09/10/2009.

Physical Loan Application Deadline Date: 11/02/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 06/01/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New York, dated 09/01/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Chenango, Cortland.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–22362 Filed 9–16–09; 8:45 am]

BILLING CODE 8025–01–P

[2] Copies of this memorandum and order were sent this date by the agency's E–Filing system to counsel for (1) Applicant SNC; (2) Joint Intervenors; and (3) the staff.

SMALL BUSINESS ADMINISTRATION

C3 Capital Partners II, L.P. (License No. 07/07–0113); Notice Seeking Exemption Under 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that C3 Capital Partners II, L.P., 4520 Main Street, Suite 1600, Kansas City, Missouri 64111–7700, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings Which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730). C3 Capital Partners II, L.P., proposes to provide financing to Findett LLC, P.O. Box 0960, St. Charles, MO 63302–0960. The financing is contemplated for the acquisition of a new production facility and to provide working capital.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because C3 Capital Partners, L.P., an Associate of C3 Capital Partners II, L.P., currently owns greater than 10 percent of Findett LLC, and therefore, Findett LLC, is considered an Associate of C3 Capital Partners II, L.P. as defined in Sec. 105.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction, within 15 days, to the Acting Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: September 11, 2009.

Harry E. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. E9–22363 Filed 9–16–09; 8:45 am]

BILLING CODE M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60651; File Nos. 10–193 and 10–194]

EDGX Exchange, Inc., and EDGA Exchange, Inc.; Notice of Filing of Applications, as Amended, for Registration as National Securities Exchanges Under Section 6 of the Securities Exchange Act of 1934

September 11, 2009.

On May 7, 2009, EDGX Exchange, Inc. (''EDGX''), and EDGA Exchange, Inc. (''EDGA,'' and, together with EDGX, the

''Exchanges'') submitted to the Securities and Exchange Commission (''Commission'') Form 1 applications under the Securities Exchange Act of 1934 (''Exchange Act''), seeking registration as national securities exchanges under Section 6 of the Exchange Act.[1] On July 30, 2009, the Exchanges each submitted Amendment No. 1 to their Form 1 applications. The Commission is publishing this notice to solicit comments on the Exchanges' Form 1 applications, as amended. The Commission will take these comments into consideration in making its determination about whether to grant the Exchanges' requests to be registered as national securities exchanges. The Commission will grant the registrations if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to the Exchanges are satisfied.[2]

The Exchanges' Form 1 applications, as amended, provide detailed information on how they propose to satisfy the requirements of the Exchange Act. In general, the Exchanges, which are wholly-owned subsidiaries of Direct Edge Holdings LLC, will each operate separate fully automated electronic books for orders to buy or sell securities with continuous, automated matching functions.[3] Liquidity on the Exchanges will be derived from orders to buy and orders to sell submitted to the Exchanges electronically by their respective members from remote locations. Neither EDGX nor EDGA will have a trading floor, nor will they have exchange specialists or market makers. The Exchanges' Form 1 applications, as amended, are available at the Commission's Public Reference Room and *http://www.sec.gov.*

Interested persons are invited to submit written data, views, and arguments concerning the Exchanges' Form 1 applications, as amended, including whether the Exchanges' applications, as amended, are consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number(s) 10–193 (for EDGX) and 10–194 (for EDGA) on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number(s) 10–193 (for EDGX) and 10–194 (for EDGA). These file number(s) should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Exchanges' Form 1 applications filed with the Commission, and all written communications relating to the application between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number(s) 10–193 (for EDGX) and 10–194 (for EDGA) and should be submitted on or before November 2, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–22347 Filed 9–16–09; 8:45 am]

BILLING CODE 8010–01–P

[1] On September 11, 2009, the Commission issued an order granting EDGX and EDGA exemptive relief, subject to certain conditions, in connection with the filing of their Form 1 applications. *See* Securities Exchange Act Release No. 60650.

[2] 15 U.S.C. 78s(a).

[3] EDGX and EDGA represented that the Step-Up functionality, set forth in the Form 1 applications, is the same functionality as Enhanced Liquidity Provider (''ELP'') functionality offered by Direct Edge ECN LLC (''DECN''). EDGX and EDGA also agreed to amend the Form 1 applications to comply with any Commission rulemaking in this area. *See* Letter from William O'Brien, Chief Executive Officer, Direct Edge Holdings LLC, DECN, EDGX, and EDGA, to James Brigagliano, Co-Acting Director, Division of Trading and Markets, Commission, dated August 10, 2009.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60650]

Order Granting Application by EDGX Exchange, Inc. and EDGA Exchange, Inc. for a Conditional Exemption Pursuant to Section 36(a) of the Exchange Act From Certain Requirements of Rules 6a–1 and 6a–2 Under the Exchange Act

September 11, 2009.

I. Introduction

EDGX Exchange, Inc. (''EDGX'') and EDGA Exchange, Inc. (''EDGA,'' and, together with EDGX, the ''Applicants'') each submitted to the Securities and Exchange Commission (''Commission'') an application on Form 1 under the Securities Exchange Act of 1934 (''Exchange Act'') to register as a national securities exchange. In addition, the Applicants, pursuant to Rule 0–12 [1] under the Exchange Act, have requested an exemption under Section 36(a)(1) of the Exchange Act [2] from certain requirements of Rules 6a–1(a) and 6a–2 under the Exchange Act.[3] This order grants the Applicants' request for exemptive relief, subject to the satisfaction of certain conditions, which are outlined below.

II. Application for Conditional Exemption From Certain Requirements of Exchange Act Rules 6a–1 and 6a–2

A. Filing Requirements Under Exchange Act Rule 6a–1(a)

Exchange Act Rule 6a–1(a) requires an applicant for registration as a national securities exchange to file an application with the Commission on Form 1. Exhibit C to Form 1 requires the applicant to provide certain information with respect to each of its subsidiaries and affiliates.[4] For purposes of Form 1,

[1] 17 CFR 240.0–12.

[2] 15 U.S.C. 78mm(a)(1).

[3] 17 CFR 240.6a–1(a) and 6a–2. *See* letter from Eric W. Hess, General Counsel and Secretary, EDGA and EDGX, to Elizabeth Murphy, Secretary, Commission, dated July 30, 2009 (''Exemption Request'').

[4] Specifically, Exhibit C requires the applicant to provide, for each subsidiary or affiliate, and for any entity that operates an electronic trading system used to effect transactions on the exchange: (1) The name and address of the organization; (2) the form of organization; (3) the name of the State and statute citation under which it is organized, and the date of its incorporation in its present form; (4) a brief description of the nature and extent of the affiliation; (5) a brief description of the organization's business or function; (6) a copy of the organization's constitution; (7) a copy of the organization's articles of incorporation or association, including all amendments; (8) a copy of the organization's by-laws or corresponding rules or instruments; (9) the name and title of the

an ''affiliate'' is ''[a]ny person that, directly or indirectly, controls, is under common control with, or is controlled by, the national securities exchange * * * including any employees.'' [5] Form 1 defines ''control'' as ''[t]he power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise * * *.'' [6] Form 1 provides, further, that any person that directly or indirectly has the right to vote 25% or more of a class of voting securities, or has the power to sell or direct the sale of 25% or more of a class of voting securities, is presumed to control the entity.[7]

Exhibit D to Form 1 requires an applicant for exchange registration to provide unconsolidated financial statements for the latest fiscal year for each subsidiary or affiliate. Exhibit D requires the financial statements to include, at a minimum, a balance sheet and an income statement with such footnotes and other disclosures as are necessary to avoid rendering the financial statements misleading. Exhibit D provides, in addition, that if any affiliate or subsidiary of the applicant is required by another Commission rule to submit annual financial statements, a statement to that effect, with a citation to the other Commission rule, may be provided in lieu of the financial statements required in Exhibit D.

A Form 1 application is not considered filed until all necessary information, including financial statements and other required documents, have been furnished in the proper form.[8]

B. Filing Requirements Under Exchange Act Rule 6a–2

Exchange Act Rule 6a–2(a)(2) requires a national securities exchange to update the information provided in Exhibit C within 10 days of any action that causes the information provided in Exhibit C to become inaccurate or incomplete. In addition, Exchange Act Rule 6a–2(b)(1) requires a national securities exchange to file Exhibit D on or before June 30 of each year, and Exchange Act Rule 6a–2(c) requires a national securities exchange to file Exhibit C every three years.

C. Exemption Request

On July 23, 2009, the Applicants requested that the Commission grant an exemption under Section 36 of the Exchange Act, subject to the conditions set forth below, from the requirement under Exchange Act Rule 6a–1 to file the information requested in Exhibits C and D to Form 1 for the ''Foreign Indirect Affiliates,'' as defined below, of the Applicants.[9] In addition, the Applicants requested an exemption, subject to certain conditions, with respect to the Foreign Indirect Affiliates from the requirements under: (1) Exchange Act Rule 6a–2(a)(2) to amend Exhibit C within 10 days if the information in Exhibit C becomes inaccurate or incomplete; and (2) Exchange Act Rules 6a–2(b)(1) and (c) to file periodic updates to Exhibits C and D.

The Applicants are wholly-owned subsidiaries of Direct Edge Holdings LLC (''DE Holdings''). International Securities Exchange Holdings, Inc. (''ISE Holdings'') owns a 31.54% ownership interest in DE Holdings.[10] ISE Holdings is a wholly-owned subsidiary of U.S. Exchange Holdings, Inc., which is wholly-owned by a German stock corporation, Eurex Frankfurt AG (''Eurex Frankfurt''). Eurex Frankfurt is wholly-owned by Eurex Zurich AG (''Eurex Zurich''), a Swiss stock corporation owned by SIX Swiss Exchange AG (''SIX Swiss Exchange''), and Deutsche Borse AG (''Deutsche Borse'').[11] SIX Swiss Exchange is a wholly-owned subsidiary of SIX Group AG (''SIX Group''), a Swiss stock corporation. According to the Applicants, Eurex Frankfurt, Eurex Zurich, SIX Swiss Exchange, Deutsche Borse, and SIX Group (collectively, the ''Foreign Direct Affiliates'') hold ownership interests in excess of 25% in a large number of other foreign entities, some of which also own interests in excess of 25% in other entities (such Foreign Direct Affiliate-owned entities are referred to, collectively, as the ''Foreign Indirect Affiliates'').[12]

Because of the limited and indirect nature of their connection to the Foreign Indirect Affiliates, the Applicants believe that the corporate and financial information of the Foreign Indirect Affiliates required by Exhibits C and D of Form 1 would have little relevance to the Commission's review of the Applicants' Form 1 applications or to the Commission's ongoing oversight of the Applicants as national securities exchanges if the Commission approves the Applicants' Form 1 applications.[13] In this regard, the Exemption Request states that the Foreign Indirect Affiliates have no ability to influence the management, policies, or finances of the Applicants and no obligation to provide funding to, or ability to materially affect the funding of, the Applicants.[14] The Exemption Request also states that (1) the Foreign Indirect Affiliates have no ownership interest in the Applicants or in any of the controlling shareholders of the Applicants; and (2) there are no commercial dealings between the Applicants and the Foreign Indirect Affiliates.[15] Further, the Exemption Request states that obtaining detailed corporate and financial information with respect to the Foreign Indirect Affiliates (1) is unnecessary for the protection of investors and the public interest and (2) would be unduly burdensome and inefficient because these affiliates are located in foreign jurisdictions and the disclosure of such information could implicate foreign information sharing restrictions in such jurisdictions.[16]

As a condition to the granting of exemptive relief, the Applicants have agreed to provide: (i) A listing of the names of the Foreign Indirect Affiliates; (ii) an organizational chart setting forth the affiliation of the Foreign Indirect Affiliates and the Foreign Direct Affiliates and the Applicants; and (iii) in Exhibit C of the Applicants' respective Form 1 applications, a description of the nature of the Foreign Indirect Affiliates' affiliation with the Foreign Direct Affiliates and the Applicants. In addition, as a condition to the granting of exemptive relief from the requirements of Exchange Act Rule 6a–2(a)(2), 6a–2(b)(1), and 6a–2(c), as

organization's present officers, governors, members of all standing committees, or persons performing similar functions; and (10) an indication of whether the business or organization ceased to be associated with the applicant during the previous year, and a brief statement of the reasons for termination of the association.

[5] Form 1 Instructions, Explanation of Terms, 17 CFR 249.1.

[6] *Id.*

[7] *Id.*

[8] 17 CFR 202.3(b)(2). Defective Form 1 applications may be returned with a request for correction or held until corrected before being accepted as a filing. *See* 17 CFR 202.3(b)(2). *See also* Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (''Regulation ATS Adopting Release'') at note 329 and accompanying text.

[9] *See* Exemption Request, *supra* note 3.

[10] *See* Exemption Request, *supra* note 3, at 2–3. *See also* Securities Exchange Act Release No. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (File No. SR–ISE–2008–85) (order approving ISE Holdings' purchase of an ownership interest in DE Holdings).

[11] SIX Swiss Exchange, a Swiss stock corporation, and Deutsche Borse, a German stock corporation, each own approximately 50% of Eurex Zurich. *See* Exemption Request, *supra* note 3, at 2–3.

[12] *See* Exemption Request, *supra* note 3, at 3.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.* The Applicants also believe that providing the information required by Exhibits C and D with respect to the Foreign Indirect Affiliates could raise confidentiality concerns because many of the Foreign Indirect Affiliates are not public companies. *Id.*

described above, the Applicants have agreed to provide amendments to the information required under conditions (i) through (iii) above on or before June 30th of each year. Further, the Applicants note that they will provide the information required by Exhibits C and D for all of their affiliates other than the Foreign Indirect Affiliates, including the Foreign Direct Affiliates.[17]

III. Order Granting Conditional Section 36 Exemption

Section 6 of the Exchange Act [18] sets forth a procedure for an exchange to register as a national securities exchange.[19] Exchange Act Rule 6a–1(a) [20] requires an application for registration as a national securities exchange to be filed on Form 1 in accordance with the instructions in Form 1. A Form 1 application is not considered filed until all necessary information, including financial statements and other required documents, have been furnished in the proper form.[21] Exchange Act Rule 6a–2 establishes ongoing requirements to file certain amendments to Form 1.

Section 36(a)(1) of the Exchange Act provides that ''the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.'' [22]

For the reasons discussed below, the Commission believes that it is appropriate in the public interest and consistent with the protection of investors to exempt the Applicants from the requirement under Exchange Act Rule 6a–1 to provide the information required in Exhibits C and D to Form 1 with respect to the Foreign Indirect Affiliates, subject to the following conditions:

(1) The Applicants must provide a list of the names of the Foreign Indirect Affiliates;

(2) The Applicants must provide an organizational chart setting forth the affiliation of the Foreign Indirect Affiliates and the Foreign Direct Affiliates and the Applicants; and

(3) As part of Exhibit C to the Applicants' respective Form 1 Applications, the Applicants must provide a description of the nature of the affiliation between the Foreign Indirect Affiliates and the Foreign Direct Affiliates and the Applicants.

The Commission believes, further, that it is appropriate in the public interest and consistent with the protection of investors to exempt the Applicants, with respect to the Foreign Indirect Affiliates, from the requirements under: (a) Exchange Act Rule 6a–2(a)(2) to amend Exhibit C within 10 days of any action that renders the information in Exhibit C inaccurate or incomplete; (b) Exchange Act Rules 6a–2(c) to provide periodic updates of Exhibit C; and (c) Exchange Act Rules 6a–2(b)(1) to provide periodic updates of Exhibits D, subject to the condition that the Applicants provide amendments to the information required under conditions (1) through (3) above on or before June 30th of each year.

As part of an application for exchange registration, the information included in Exhibits C and D is designed to help the Commission make the determinations required under Sections 6(b) and 19(a) of the Exchange Act with respect to the application. The updated Exhibit C and D information required under Exchange Act Rule 6a–2 is designed to help the Commission exercise its oversight responsibilities with respect to registered national securities exchanges. Specifically, Exhibit D is designed to provide the Commission with information concerning the financial status of an exchange and its affiliates and subsidiaries,[23] and Exhibit C provides the Commission with the names and organizational documents of these affiliates and subsidiaries.[24] Such information is designed to help the Commission determine whether an applicant for exchange registration would have the ability to carry out its obligations under the Exchange Act, and whether a registered national securities exchange continues to have the ability to carry out its obligations under the Exchange Act.

Since the most recent amendments to Form 1 in 1998,[25] many registered national securities exchanges that previously were member-owned organizations with few affiliated entities have demutualized. Some of these demutualized exchanges have been consolidated under holding companies with numerous affiliates that, in some cases, have only a limited and indirect connection to the registered national securities exchange, with no ability to influence the management or policies of the registered exchange and no obligation to fund, or to materially affect the funding of, the registered exchange. The Commission believes that, for these affiliated entities, the information required under Exhibits C and D would have limited relevance to the Commission's review of an application for exchange registration or to its oversight of a registered exchange.

Based on the Applicants' representations, the indirect nature of the relationship between the Applicants and the Foreign Indirect Affiliates, and the information that the Applicants will provide with respect to the Foreign Direct Affiliates and the Foreign Indirect Affiliates, the Commission believes that it will have sufficient information to review the Applicants' Form 1 applications and to make the determinations required under Sections 6(b) and 19(a) of the Exchange Act with respect to their applications for registration as national securities exchanges.[26] The Commission believes, further, that it would have the information necessary to oversee the Applicants' activities as national securities exchanges if the Commission approves the Applicants' Form 1 applications. In particular, the Commission notes that the Applicants have represented that they have no direct connection to the Foreign Indirect Affiliates, that the Foreign Indirect Affiliates have no ability to influence the management or policies of the Applicants, and that the Foreign Indirect Affiliates have no obligation to fund, or ability to materially affect the funding of, the Applicants. In addition, the Commission notes that the Applicants represented that: (1) The Foreign Indirect Affiliates have no ownership interest in the Applicants or

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[17] *See* Exemption Request, *supra* note 3, at 4.

[18] 15 U.S.C. 78f.

[19] Specifically, Section 6(a) of the Exchange Act states that ''[a]n exchange may be registered as a national securities exchange * * * by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.'' Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject.

[20] 17 CFR 240.6a–1(a).

[21] 17 CFR 202.3(b)(2). *See also* note 8, *supra*.

[22] 15 U.S.C. 78mm(a)(1).

[23] *See* Securities Exchange Act Release No. 18843 (June 25, 1982), 47 FR 29259 (July 6, 1982) (proposing amendments to Form 1); *see also* Form 1, 17 CFR 249.1, and Section II.A., *supra*.

[24] Form 1, 17 CFR 249.1. *See also* note 4, *supra*.

[25] *See* Regulation ATS Adopting Release, note 8, *supra*.

[26] 15 U.S.C. 78f(b) and 78s(a). Section 6(b) of the Exchange Act enumerates certain determinations that the Commission must make with respect to an exchange before registering the exchange as a national securities exchange. The Commission will not register an exchange as a national securities exchange unless it is satisfied that the exchange meets these requirements. *See* Regulation ATS Adopting Release, *supra* note 8, at IV.B.

in any of the controlling shareholders of the Applicants; and (2) there are no commercial dealings between the Applicants and the Foreign Indirect Affiliates.[27] The Commission also believes that, based on the Applicants' representations, it could be burdensome for the Applicants to obtain detailed corporate and financial information with respect to the Foreign Indirect Affiliates because these affiliates are located in foreign jurisdictions and the disclosure of such information could implicate foreign information sharing restrictions in such jurisdictions.[28] Given the limited and indirect relationship between the Applicants and the Foreign Indirect Affiliates and the location of the Foreign Indirect Affiliates in foreign jurisdictions, as described above, the Commission believes that the detailed corporate and financial information required in Exhibits C and D with respect to the Foreign Indirect Affiliates is unnecessary for the Commission's review of the Applicants' Form 1 applications and would be unnecessary for the Commission's oversight of the Applicants as registered national securities exchanges following any Commission approval of their Form 1 applications.

For the reasons discussed above, the Commission finds that the conditional exemptive relief requested by the Applicants is appropriate in the public interest and is consistent with the protection of investors.

It is ordered, pursuant to Section 36 of the Exchange Act,[29] and subject to the conditions described above, that the Applicants are exempt from the requirements to: (1) Include in their Form 1 applications the information required in Exhibits C and D to Form 1 with respect to the Foreign Indirect Affiliates; and (2) with respect to the Foreign Indirect Affiliates, update the information in Exhibits C and D to Form 1 as required by Exchange Act Rules 6a–2(a)(2), 6a–2(b)(1), and 6a–2(c).

By the Commission.

Elizabeth M. Murphy,

Secretary.

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[27] *See* Exemption Request, *supra* note 3, at 3.

[28] *See id.*

[29] 15 U.S.C. 78mm.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60653; File No. SR–NYSE–2009–89]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change As Modified by Amendment No. 1 To Amend Certain Corporate Governance Requirements

September 11, 2009

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 26, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. NYSE filed Amendment No. 1 to the proposed rule change on September 10, 2009.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain of its corporate governance requirements set forth in Section 303A of the Listed Company Manual (the ''Manual''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 4, 2003, the U.S. Securities and Exchange Commission (the ''SEC'') approved Section 303A of the Listed Company Manual. This section imposed significant corporate governance requirements on the Exchange's listed companies and focused mainly on director independence and the duties of the audit, nomination and compensation committees of the board. The Exchange now proposes to amend Section 303A to clarify some of the disclosure requirements, to codify certain interpretations made since the rules were enacted, and to replace certain disclosure requirements by incorporating into the Exchange's rules the applicable disclosure requirements of Regulation S–K. In addition, the Exchange is proposing to eliminate the current requirements of Section 307.00 and redesignate Section 303A.14 as Section 307.

The proposed changes to Sections 303A and 307.00 will not take effect until January 1, 2010. Consequently, the existing text of these sections will remain in the Listed Company Manual through December 31, 2009 and will be removed immediately thereafter. Upon approval of this filing, the amended versions of those sections will also be included in the Listed Company Manual, with introductory text indicating that the revised text does not become operative until January 1, 2010.

The Exchange proposes to amend references to the ''company'' throughout Section 303A to the ''listed company,'' wherever the context makes that change appropriate.

The discussion below begins with a description of the proposed approach to corporate governance disclosures, as this approach is adopted consistently in numerous instances throughout Section 303A. There then follows a detailed section-by-section description of all of the other proposed changes.

Corporate Governance Disclosures:

On August 29, 2006, in connection with amendments to its executive compensation and related person disclosure, the SEC adopted Item 407 of Regulation S–K to consolidate director independence and related corporate governance disclosure requirements under a single item and update such

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, NYSE added a sentence to the purpose section describing where a copy of the proposed rule change may be obtained; clarified a sentence in the purpose section; revised the statutory basis section; and underlined a parenthetical in the proposed rule text to show new text.

disclosure requirements regarding director independence to reflect the SEC's own disclosure requirements, as well as the principal U.S. markets' listing standards.[5] These rules duplicate some of the NYSE's Section 303A corporate governance disclosure requirements. Indeed, in some instances, the SEC's rules require more detailed disclosures than are currently required by Section 303A.

Since the adoption of Item 407, the Exchange has received numerous calls from listed companies requesting guidance from the Exchange on whether compliance with the disclosure requirements of Item 407 would also satisfy their obligations under Section 303A. For example, Section 303A.02(a) provides that the board of directors of a listed company may adopt and disclose categorical standards to assist it in making determinations of independence and may make a general disclosure if a director meets these standards. Item 407(a)(3), on the other hand, requires that companies describe by specific category or type, any transactions, relationships or arrangements (other than those disclosed pursuant to Item 404(a) of Regulation S–K) that were considered by the board of directors with respect to each director that is identified as independent. As a result, while Section 303A.02(a) would only require that companies disclose the categories of relationships that were per se deemed to be immaterial with respect to board independence, Item 407(a)(3) goes further, requiring that companies also disclose which directors had relationships that fall into the categorical standards utilized by the board in determining independence.

In an effort to avoid duplication and confusion, the Exchange is proposing to eliminate each disclosure requirement currently included in Section 303A that is also required by Item 407 and to incorporate directly into Section 303A the applicable disclosure requirement of Item 407. The Exchange believes that, since Item 407 requires duplicative or more specific disclosures than Section 303A, such elimination will facilitate compliance for listed companies, while providing investors with significant transparency on corporate governance. While this approach may appear to be redundant, the incorporation of certain requirements of Item 407 into Section 303A serves an important purpose in that companies whose Item 407 disclosure is deficient will be deemed to be out of compliance with Exchange rules. Consequently, the Exchange will be able to take actions against a noncompliant company, ranging from appending a below compliance (''BC'') indicator to the company's ticker symbol to issuing a public reprimand letter and, in extreme cases, delisting.

The following are the disclosure items that will be eliminated and the provisions of Item 407 that will be added:

- The Section 303A.00 controlled company exemption disclosure requirement is replaced by a requirement that a controlled company that chooses to take advantage of any or all of the available Section 303A controlled company exemptions must comply with the disclosure requirements in Instruction 1 to Item 407(a).
- The Section 303A.02(a) independent director disclosure requirement is replaced by a requirement that the listed company must comply with the disclosure requirements in Item 407(a).
- The Section 303A.05(b)(i)(C) compensation committee charter requirement to produce a compensation committee report is replaced by a requirement to prepare the disclosure required by Item 407(e)(5).
- The Section 303A.07(c)(i)(B) audit committee charter requirement to prepare an audit committee report is replaced by a requirement to prepare the disclosure required by Item 407(d)(3)(i).

The Exchange is also proposing to move the audit, compensation and nominating committee charter, corporate governance guidelines and code of business conduct and ethics Web site posting requirements to a new Web site Posting Requirement section in each of the applicable subsections of Section 303A. The Web site Posting Requirement section of Section 303A.07 will specify that closed-end funds are not subject to the requirement to post their audit committee charter on their Web site. This is consistent with the Exchange's current practice, as Section 303A.00 specifically exempts closed-end funds from the application of Section 303A.09.

The Exchange is proposing to change the disclosure regarding Web site postings to just require a listed company to disclose in its annual proxy statement or Form 10–K that the applicable charters, corporate governance guidelines and code of business conduct and ethics are available on the company's Web site, providing the company's Web site address. This will conform the Exchange's disclosure requirements with respect to committee charters to the disclosure required by Instruction 2 to Item 407. The Exchange proposes to eliminate the requirement in Sections 303A.09 and 303A.10 that the listed company disclose that hard copies of the charters, guidelines and code are available in print upon request. The Exchange believes that it is unnecessary to require companies to provide physical copies of these documents upon request when they are readily accessible on the company's Web site.

Section 303A currently contains certain disclosure requirements that require listed companies to make the required disclosures in the company's annual proxy statement, or, if the company does not file an annual proxy statement, in the company's annual report filed with the SEC. The Exchange proposes to amend these requirements so that companies will have the option of either continuing to provide these disclosures in the annual proxy statement or annual report, as applicable, or making the disclosures on or through the company's Web site. If a company chooses to make the applicable disclosure on or through its Web site, it must disclose that fact in its annual proxy statement or annual report, as applicable, and provide the Web site address. The disclosure requirements amended [sic] as described in this paragraph are as follows:

- The disclosure requirement of Section 303A.02(b)(v) with respect to contributions made by the listed company to any tax exempt organization in which any independent director serves as an executive officer if, within the preceding three years, contributions in any single fiscal year from the listed company to the organization exceeded the greater of $1 million, or 2% of such tax exempt organization's consolidated gross revenues.
- The disclosure requirement of Section 303A.03 with respect to the identity of the director chosen to preside at executive sessions of non-management or independent directors or, if the same individual is not the presiding director at every meeting, the procedure by which a presiding director is selected for each executive session.
- The requirement of Section 303A.03 that listed companies must disclose a method for interested parties to communicate directly with the presiding director or the non-management or independent directors as a group.
- The disclosure requirement of Section 303A.07(a) with respect to the board's determination that the service of any audit committee member on more than three public company audit committees does not impair the ability

[5] *See* Securities Act Release No. 33–8732A (August 29, 2006).

of such audit committee member to serve effectively on the listed company's audit committee.

If a listed company makes a required Section 303A disclosure in its annual proxy statement, or if the company does not file an annual proxy statement, in its annual report filed with the SEC, it may incorporate such disclosure by reference from another document that is filed with the SEC to the extent permitted by applicable SEC rules.

Where a listed company has the option of making a required disclosure under Section 303A in an annual report filed with the SEC and is not a company required to file a Form 10–K, a new ''Disclosure Requirements'' subsection of Section 303A.00 provides that the provision shall be interpreted to mean the annual periodic disclosure form that the listed company does file with the SEC. For example, for a closed-end management company, the appropriate form would be the annual Form N–CSR. This approach is identical to that of the current ''References to Form 10–K'' subsection of Section 303A.00 which is being eliminated as part of the reorganization of Section 303A.00. The reference in the ''References to Form 10–K'' subsection of Section 303A.00 to companies that are not required to file either an annual proxy statement or an annual periodic report with the SEC is not carried over into the new ''Disclosure Requirements'' section, as there are no companies that have disclosure obligations under Section 303A that are not subject to one of these filing requirements.

Section 303A.00—Introduction:

Under the Exchange's current rules, companies listing in conjunction with an initial public offering (''IPO'') are able to phase in their independent audit, nominating and compensation committees, but are required to have one independent director on each committee as of the date of listing. Market practice, however, is that a company does not normally appoint independent directors to its board in advance of the date it lists on the NYSE. Instead, the initial board meeting is held sometime after the listing date but prior to the date that the transaction closes.

In light of this practice, the Exchange proposes to amend the Introduction section of Section 303A to clarify its requirements by specifying that companies listing in conjunction with an IPO, spin-off or carve-out must be in compliance with the applicable provisions of the SEC's audit committee requirements set forth in Rule 10A–3, which is incorporated into the Exchange's corporate governance rules as Section 303A.06, as of the listing date. The Exchange proposes to define the listing date for these purposes as the date the company's securities first trade on the Exchange (trading may be regular way or when issued). The Exchange is also proposing to require that a company listing in conjunction with its IPO, spin-off or carve-out have a majority of independent members on its audit committee within 90 days of the effective date of its registration statement and a fully independent committee within one year of the effective date of its registration statement.

Section 303A.07(a) requires a company to have a minimum of three members on the audit committee as of the date of listing. As a result, companies on the NYSE that are not required to have a fully independent audit committee until one year from the listing date may be forced to appoint non-independent directors to the audit committee in order to satisfy the three-person minimum. The Exchange proposes in the Introduction section to clarify that companies listing in conjunction with an IPO, spin-off or carve-out may also phase in compliance with the three-person minimum on the following schedule: At least one member by the listing date, at least two members within 90 days of the listing date and at least three members within one year of the listing date. Alternatively, the company may choose to have non-independent directors on the audit committee subject to the independent director phase-in requirements as discussed below.

For purposes of Rule 10A–3, the SEC provides that a company is listing in conjunction with an IPO only to the extent that, immediately prior to the effective date of the registration statement relating to the IPO, the company is not ''required to file'' periodic reports with the SEC under the Act. The Exchange has been advised by the staff of the SEC that a company that voluntarily files reports under the Act may be considered an IPO and avail itself of the IPO transitions under Rule 10A–3. The Exchange proposes to clarify that a company that was required to file periodic reports with the SEC prior to listing is precluded from including non-independent directors on its audit committee during the phase-in period.

The Exchange also proposes to amend the Introduction section to clarify that companies listing in connection with an IPO must:

- Satisfy the majority independent board requirement of Section 303A.01, if applicable, within one year of the listing date.
- Satisfy the Web site posting requirements of Sections 303A.04, 303A.05, 303A.07(b), 303A.09 and 303A.10, to the extent such sections are applicable, by the earlier of the date the initial public offering closes or five business days from the listing date.
- Have at least one independent member on its nominating committee and at least one independent member on its compensation committee as required by Sections 303A.04 and 303A.05, if applicable, by the earlier of the date the initial public offering closes or five business days from the listing date, at least a majority of independent members on each committee within 90 days of the listing date and fully independent committees within one year of the listing date.

The Exchange proposes to amend the Introduction section to clarify that companies listing in conjunction with a carve-out or spin-off transaction must:

- Satisfy the majority independent board requirement of Section 303A.01, if applicable, within one year of the listing date.
- Satisfy the Web site posting requirements of Sections 303A.04, 303A.05, 303A.07(b), 303A.09 and 303A.10, to the extent such sections are applicable, by the date the transaction closes.
- Have at least one independent member on its nominating committee and at least one independent member on its compensation committee as required by Sections 303A.04 and 303A.05, if applicable, by the date the transaction closes, at least a majority of independent members on each committee within 90 days of the listing date and fully independent committees within one year of the listing date.

In addition, the Exchange proposes to include sections detailing the compliance requirements applicable to a company that (i) lists upon emergence from bankruptcy; (ii) transfers from another market; (iii) ceases to be a controlled company; or (iv) ceases to be a foreign private issuer.

Companies that list upon emergence from bankruptcy will be able to phase in majority independent boards and independent nominating and compensation committees on the same schedule as companies listing in conjunction with an IPO. The applicable compliance dates, however, will run from the listing date. A company listing upon emergence from bankruptcy will be required to have a fully compliant audit committee at the time of listing unless an exemption is available to it under Rule 10A–3.

Currently, the rule provides that companies listing upon transfer from

another market have one year from the date of transfer in which to comply with any requirement to the extent the market on which they were listed did not have the same requirement. The Exchange proposes to amend this section to apply only to companies registered pursuant to Section 12(b) of the Act that transfer to the NYSE. If the other exchange had a substantially similar requirement and the company was afforded a transition period that had not expired, the company will have the same transition period as would have been available to it on the other exchange.

Companies registered pursuant to Section 12(g) of the Act that transfer to the NYSE would not have been subject to corporate governance standards at the time of transfer. Therefore, the Exchange believes that it would not be appropriate for such companies to have 12 months to comply with every aspect of the Exchange's corporate governance rules. Instead, the Exchange proposes to treat such companies like a company listing in connection with an IPO. The applicable compliance dates, however, would run from the listing date and since such companies were required to file periodic reports with the SEC prior to listing, only independent directors would be permitted on the audit committee during the transition period.

Companies that cease to be controlled companies will be able to phase in majority independent boards and independent nominating and compensation committees on the same schedule as companies listing in conjunction with an IPO. The applicable compliance dates, however, will run from the date that the company's status changed.

The Exchange also proposes to clarify its requirements as to when a company is a controlled company. The Exchange's current rule defines a controlled company as a listed company of which more than 50% of the voting power is held by an individual, group or another company. Since Section 303A was approved in 2003, the Exchange has had a number of inquiries as to what constitutes a ''group'' for purposes of the controlled company definition. It also came to the Exchange's attention that some companies were claiming to be owned by a ''group'' where a shareholder agreement existed relating only to the disposition of assets. The Exchange proposes, therefore, to make it clear that, in order to be deemed a controlled company, more than 50% of the voting power for the election of directors must be held by an individual, group or another company.

When a foreign private issuer ceases to qualify as such under SEC rules (so that it is required to file on domestic forms with the SEC), it may become subject to a number of requirements under Section 303A that it was not previously subject to if its home country practice differed from the applicable requirements of Section 303A. Depending upon the type of issuer, these may include the requirement to have independent nominating and compensation committees and a majority of independent directors. In addition, the company's directors may be required to meet the Section 303A.02 definition of independence, including with respect to their existing audit committee members. The Exchange proposes to modify its rules to take into consideration recent changes in Rule 3b–4–[6] of the Act which enables a foreign private issuer to test its eligibility once a year. Specifically, the Exchange proposes to require a company that ceases to be a foreign private issuer to be in compliance with the domestic company requirements of Section 303A as follows:

- The company must satisfy the majority independent board requirement of Section 303A.01, if applicable, within six months of the date it fails to qualify for foreign private issuer status pursuant to SEC Rule 240.3b–4. Under SEC Rule 240.3b–4, a company tests its status as a foreign private issuer on an annual basis at the end of its most recently completed second fiscal quarter (the ''Determination Date'').
- The company must satisfy the Web site posting requirements of Sections 303A.04, 303A.05, 303A.07(b), 303A.09 and 303A.10, to the extent such sections are applicable, within six months of the Determination Date.
- The company must have fully independent nominating and compensation committees as required by Sections 303A.04 and 303A.05, if applicable, within six months of the Determination Date.
- The company's audit committee members must be in compliance with the independence requirements of Section 303A.02, if applicable, within six months of the Determination Date.
- The company must comply with the three-person audit committee requirement of Section 303A.07(a) within six months of the Determination Date.
- The company must comply with the shareholder approval requirements of Section 303A.08 by the Determination Date, subject to the provisions in Section 303A.08 under the heading ''Ongoing Transition Period for a Foreign Private Issuer Whose Status Changes.''

Prior to the amendment of Sections 203.01 and 103 in August 2006,[7] Section 203.01 required listed companies to distribute to their shareholders each year an annual report containing audited financial statements. Section 103 permitted foreign private issuers to distribute a summary annual report in fulfillment of their obligations under Section 203.01. As amended, Sections 203.01 and 103 no longer require the physical distribution of annual reports. Instead, companies are required to post their annual report filed with the SEC on or through their Web site. The Exchange proposes to conform Section 303A to these amendments by eliminating from Section 303A all references to annual reports previously required under Section 203.01 and summary annual reports previously permitted under Section 103.

The Exchange also proposes to revise the Introduction section to more clearly specify which issuers are required to comply with Section 303A.08 and to delete the section relating to effective dates due to the fact that the rules are fully applicable, other than for the specified transition periods. The Exchange notes that it proposes to clarify that closed-end funds are subject to Section 303A.08. The fact that Section 303A.00 does not currently appear to require closed-end funds to comply with Section 303A.08 results from an oversight on the part of the Exchange.

The Exchange is adding a reference in the ''Preferred and Debt Listings'' subsection of the Introduction section to specify that, except as otherwise provided by Rule 10A–3 under the Act, Section 303A does not apply to securities listed under Section 703.22 (''Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities'') of the Listed Company Manual. Section 703.22 had not yet been adopted at the time that Section 303A.00 was adopted. Securities listed under Section 703.22 are debt securities and, as companies listing only debt securities on the Exchange are generally not subject to Section 303A, the Exchange believes it is consistent to adopt the same approach with issuers of securities listed under Section 703.22. In addition, the Exchange proposes to move the reference to securities listed under

[6] 17 CFR 240.3b–4.

[7] *See* Securities Exchange Act Release No. 54344 (August 21, 2006); 71 FR 51260 (August 29, 2006) (SR–NYSE–2005–68).

Section 703.21 (''Equity-linked Debt Securities'') from the ''Other Entities'' subsection of the Introduction section to the ''Preferred and Debt Listings'' subsection, as securities listed under Section 703.21 are debt securities and are more properly subject to the corporate governance requirements applicable to debt securities. To the extent that Rule 10A–3 applies to the issuer of a security listed under either Section 703.21 or Section 703.22, such issuer will be required to comply with Sections 303A.06 and 303A.12(b). The Exchange also proposes to delete the reference to Section 703.16 (''Investment Company Units'', more commonly referred to as ''Exchange-Traded Funds'' or ''ETFs'') in the ''Other Entities'' subsection as ETFs are covered by the ''Closed-End and Open-End Funds'' subsection of the Introduction section.

The ''Closed-End and Open-End Fund'' subsection of the ''Introduction'' section is amended to clarify the requirements applicable to closed-end funds. Closed-end funds must comply with the requirements of Sections 303A.06, 303A.07(a), 303A.07(b), 303A.08 and 303A.12 with the following exceptions:

- A closed-end fund is not required to comply with the director independence requirements of Section 303A.02 incorporated into Section 303A.07(a) (this exemption already exists in the current rule, but the Exchange is proposing to move the requirement to comply with the director independence requirements of Section 303A.02 from its current position in Section 303A.07(b) to Section 303A.07(a), requiring a conforming change in the ''Closed-End and Open-End Fund'' subsection of the ''Introduction'' section. A similar conforming change is required in the paragraph discussing Business Development Companies).
- Closed-end funds are not required to comply with the Disclosure Requirements in Section 303A.07(a), when a director serves on multiple boards in the same fund complex as such service will be counted as one board for purposes of Section 303A (this exemption is already in the ''Closed-End and Open-End Fund'' subsection of the ''Introduction'' section).
- A closed-end fund is not required to make the audit committee charter required by Section 303A.07(b) available on or through its Web site (this specifies the existence of an exemption that is implicit in the current rule).

Section 303A.02—Independence Requirements:

The Exchange proposes to revise the General Commentary to Section 303A.02(b) to clarify that references to a listed company or any other company relevant to the independence standards of Section 303A.02(b) include any parent or subsidiary in a consolidated group with such company.

The Exchange proposes to delete the ''Transition Rule'' subsection of Section 303A.02(b) as the transition period has ended.

Section 303A.03—Requirement for meetings of non-management directors:

The Exchange's current rule requires that listed companies hold regular meetings of non-management directors and recommends that companies schedule a meeting of independent directors at least once a year. Some companies have expressed a preference to holding regular executive sessions of just independent directors. The Exchange believes that allowing companies to hold regular executive sessions of independent directors satisfies the original intention of the rule, so the Exchange proposes to revise the Commentary accordingly.

The Exchange is also proposing to clarify the fact that all interested parties, not only shareholders, must be able to communicate their concerns regarding the listed company to the presiding director, or the non-management or independent directors as a group.

Section 303A.05—Requirements for Compensation Committees:

The current responsibilities designated to the compensation committee include the review and approval of corporate goals, objectives, and the CEO's performance as they relate to CEO compensation. The committee also makes recommendations to the board regarding compensation of non-CEO executive officers.

The Exchange proposes to update the current requirement for the compensation committee to produce a report to reflect the disclosure required by Item 407(e)(5) of Regulation S–K regarding compensation of executive officers.

Section 303A.06—Requirements for Audit Committees:

In an effort to highlight listed companies' disclosure requirements, the Exchange proposes to revise the Commentary to Section 303A.06 to specifically point out that Rule 10A–3 requires disclosure of reliance on certain exceptions contained in that rule.

Section 303A.07—Duties of the Audit Committee:

The Exchange is proposing to combine the Section 303A.07(a) requirement for a listed company to have an audit committee comprised of a minimum of three members with the Section 303A.07(b) requirement that such audit committee members must meet the independence standards set forth in Section 303A.02 and, in the absence of an applicable exemption, Rule 10A–3 and to renumber the remaining parts of Section 303A.07.

In addition, Section 303A.07(a) currently requires that, if an audit committee member simultaneously serves on the audit committees of more than three public companies, and the listed company does not limit the number of audit committees on which its audit committee members serve to three or less, then in each case, the board must determine that such simultaneous service would not impair the ability of such member to effectively serve on the listed company's audit committee and must disclose such determination. The current language has led to some confusion that disclosure is only required to the extent that the listed company does not limit the number of audit committees on which its audit committee members serve to three or less. The Exchange proposes to amend the language to make clear that the mandated disclosure is required to the extent that an audit committee member simultaneously serves on the audit committees of more than three public companies.

Section 303A.07 requires that a company's audit committee charter must provide that the audit committee will meet to review and discuss the company's financial statements and must review the company's specific Management's Discussion and Analysis disclosures. Closed-end funds, however, are not subject to the requirement to provide this disclosure. The Exchange proposes to add language to the Commentary to make clear that, if a closed-end fund chooses to voluntarily include a ''Management's Discussion of Fund Performance'' in its Form N–CSR, its audit committee is required to meet to review and discuss it. The Exchange also intends to clarify that telephonic conference calls constitute meetings for purposes of Section 303A.07 if allowed by applicable corporate law, but that polling directors is not allowed in lieu of a meeting.

The Exchange proposes to update the current requirement for the audit committee to produce a report to reflect the disclosure required by Item 407(d)(3)(i).

Section 303A.08—Shareholder Approval of Equity Compensation Plans:

The Exchange proposes to revise the ''Transition Rules'' section of this item to specify that the effective date of this listing standard was June 30, 2003 and

to eliminate references to transitional provisions that are no longer relevant in light of the expiration of the specified transition periods.

To the extent that a listed foreign private issuer ceases to qualify as such under SEC rules (so that it is required to file on domestic forms with the SEC) and as a result of such change in status becomes subject to Section 303A.08 for the first time, such company will be granted a limited transition period with respect to discretionary plans and formula plans that do not comply with Section 303A.08 that were in place prior to the date that its status changed so that additional grants may be made after the date that its status changed without shareholder approval. This transition period will end upon the later to occur of:

• Six months after the date as of which the company fails to qualify for foreign private issuer status pursuant to SEC Rule 240.3b–4. Under SEC Rule 240.3b–4, a company tests its status as a foreign private issuer on an annual basis at the end of its most recently completed second fiscal quarter (the ''Determination Date''); and

• the first annual meeting after the Determination Date, but, in any event no later than one year after the Determination Date.

A shareholder-approved formula plan may continue to be used after the end of this transition period if it is amended to provide for a term of ten years or less from the date of its original adoption or, if later, the date of its most recent shareholder approval. Such an amendment may be made before or after the Determination Date, and would not itself be considered a ''material revision'' requiring shareholder approval.

In addition, a formula plan may continue to be used, without shareholder approval, if the grants after the date that the company's status changed are made only from the shares available immediately before the Determination Date, in other words, based on formulaic increases that occurred prior to the Determination Date.

A shareholder-approved formula plan may continue to be used after the end of this transition period if it is amended to provide for a term of ten years or less from the date of its original adoption or, if later, the date of its most recent shareholder approval. Such an amendment may be made before or after the date that the company's status changed, and would not itself be considered a ''material revision'' requiring shareholder approval.

In addition, a formula plan may continue to be used, without shareholder approval, if the grants after the date that the company's status changed are made only from the shares available immediately before the date that the company's status changed, in other words, based on formulaic increases that occurred prior to the date that the company's status changed.

Section 303A.10—Code of Business Conduct and Ethics:

Section 303A.10 requires that listed companies disclose any waiver of the code of business conduct and ethics granted to executive officers and directors. The Exchange proposes to specify that the waiver must be disclosed to shareholders within four business days of such determination and that disclosure must be made by distributing a press release, providing Web site disclosure, or by filing a current report on Form 8–K with the SEC. This proposed approach varies slightly from the guidance currently provided by Question G–1 of the NYSE's Frequently Asked Questions on Section 303A, which provides that the waiver must be disclosed to shareholders within two to three business days of the board's determination. The Exchange is proposing a four-day period to be uniform with the requirements of Item 5.05 of Form 8–K regarding disclosure of waivers from codes of ethics and will revise the answer in the FAQs accordingly.

Section 303A.11—Foreign Private Issuer Disclosure:

Section 303A.11 requires that foreign private issuers disclose the significant differences between the corporate governance practices followed by the company in its home country and the requirements of Section 303A applicable to U.S. companies. Currently, companies have a choice to make that disclosure either in their annual report to shareholders or on their corporate Web sites. Under Item 16G of Form 20–F (which became effective for filings relating to fiscal years ending on or after December 15, 2008), foreign private issuers that file their annual report on Form 20–F are now required to include the disclosure of significant differences on the Form 20–F. Therefore, to avoid confusing and duplicative requirements, the Exchange proposes to require foreign private issuers that are required to file an annual report on Form 20–F with the SEC to include the statement of significant differences in that annual report. All other foreign private issuers will have the choice to either (i) include the statement of significant differences in an annual report filed with the SEC or (ii) make the statement of significant differences available on or through the company's Web site. If the statement of significant differences is made available on or through the company's Web site, the company must disclose that fact in its annual report filed with the SEC and provide the Web site address.

Section 303A.12—Certification Requirements:

Currently, Section 303A.12(a) requires that listed companies disclose that they filed the CEO certification required by the NYSE and any certifications required by the SEC in the following year's annual report. This requirement has caused significant confusion due to the fact that it relates to filings that were made in the previous year. The Exchange proposes to eliminate this disclosure requirement in light of several factors. First, the Exchange notes that at the time the Section 303A.12(a) disclosure requirement was adopted, the SEC had not yet amended the exhibit requirements of Form 10–K to require that the SEC certification be included as an exhibit to the company's annual report filed with the SEC. The Exchange also notes that with respect to disclosure on whether a company submitted a qualified annual written affirmation to the NYSE during the previous year, investors now have timely notification of all material non-compliance with the NYSE's listing standards due to the SEC's amended requirements relating to Form 8–K filings (Item 3.01 of Form 8–K requires registrants to file a Form 8–K disclosing any noncompliance with Exchange rules and any action or response that, at the time of filing, the registrant has determined to take regarding its noncompliance, within four business days of either (i) notification by the Exchange of the registrant's noncompliance with an Exchange rule or (ii) notification by the registrant to the Exchange that the registrant is aware of a material noncompliance with an Exchange rule). In addition, the NYSE has a program of appending a below compliance (''BC'') indicator to the ticker symbol of an issuer that is non-compliant with the Exchange's corporate governance standards. In light of the above, the Exchange has reevaluated the benefit of its current disclosure requirements and believes that disclosure regarding the previous year's compliance is unnecessary.

The Exchange is also proposing to revise Section 303A.12(b) to specify that listed companies must notify the Exchange in writing after any executive officer of the listed company becomes aware of any non-compliance with Section 303A, as opposed to requiring

notification in the event of ''material non-compliance'' as provided by the current rule.

Section 303A.14—Web site requirement:

Listed companies have expressed confusion regarding the placement within Section 303A of the requirement contained in Section 303A.14 that each listed company must maintain a publicly accessible Web site. As a result, the Exchange proposes to redesignate Section 303A.14 as Section 307.00 and to clarify in the commentary that this requirement applies to companies subject to Web site posting requirements under any applicable provision of the Listed Company Manual, rather than just Section 303A. Section 307 will specify that companies' Web sites must be accessible from the United States, must clearly indicate in the English language the location of the documents on the Web site that are required to be posted and such documents must be printable in the English language.

Section 307.00:

Section 307.00 of the Listed Company Manual sets out guidance regarding related party transactions. As this guidance is duplicative of Section 314 (''Related Party Transactions'') and is therefore redundant, the Exchange proposes to eliminate Section 307.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[8] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes the proposed amendments are consistent with the protection of investors and the public interest, as they simply apply existing principles of Section 303A to situations not currently covered by the rules, clarify existing interpretations of Exchange rules and harmonize Exchange disclosure requirements with those of the Commission and, therefore, do not substantively lessen the Exchange's regulatory requirements for listed companies.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2009–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–89 and should be submitted on or before October 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary

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[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60648; File No. SR–FINRA–2009–048]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 5230 (Payments Involving Publications That Influence the Market Price of a Security) in the Consolidated FINRA Rulebook

September 10, 2009.

On July 21, 2009, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the By-Laws of FINRA Regulation, Inc. (''FINRA Regulation'') to adopt NASD Rule 3330 (Payment Designed to Influence Market Prices, Other than Paid Advertising) as FINRA Rule 5230 in the consolidated FINRA rulebook, with several changes to clarify

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the scope of the rule. The proposed rule change was published for comment in the **Federal Register** on August 7, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[4] In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should continue to protect investors and promote the maintenance of fair, orderly and efficient markets by modernizing and clarifying the regulations that apply when payments are made in connection with the publication or circulation of media that could have an effect on the market price of any security. The Commission notes that the types of media that could have an effect on the market price of a security have changed since NASD Rule 3330 was last amended. Therefore, the updating of the list of media in proposed FINRA Rule 5230 will modernize the regulation.

The Commission also notes that payments for the publication of information relating to securities are permitted in certain circumstances under Section 17(b) of the Securities Act and under NASD Rule 2711(h)(13). Therefore, the Commission believes that the amendment to the rule will clarify that proposed FINRA Rule 5230 is consistent with these and other regulations where such payments are explicitly permitted.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–FINRA–2009–048) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22371 Filed 9–16–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60647; File No. SR–NYSEAmex–2009–60]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NYSE Amex LLC in Connection With the Proposal of NYSE Euronext To Require That at Least Three-Fourths of Its Directors Satisfy Independence Requirements

September 10, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 4, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is submitting this rule filing in connection with the proposal of its ultimate parent, NYSE Euronext (the ''Corporation''),[4] to amend its bylaws and Director Independence Policy to require that at least three-fourths of the members of its Board of Directors shall satisfy the independence requirements for directors of the Corporation. Currently the bylaws and Director Independence Policy require that all members of the Board of Directors, other than the Chief Executive Officer and the Deputy Chief Executive Officer, shall satisfy the independence requirements.[5] The proposed rule change is identical to a rule change filed by the New York Stock Exchange LLC (''NYSE'') that was recently approved by the Commission.[6] The text of the proposed rule change is attached hereto as Exhibit 5,[7] and is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Bylaws of the Corporation, which is the ultimate parent company of the Exchange, require that ''all members of the Board of Directors, other than the Chief Executive Officer and the Deputy Chief Executive Officer, shall satisfy the independence requirements for directors of the Corporation, as modified and amended by the Board of Directors from time to time.'' Similarly, the Director Independence Policy of the Corporation states that ''[e]ach Director (other than the Chief Executive Officer and the Deputy Chief Executive Officer), including the Chairman of the Board and the Deputy Chairman of the Board if not also the Chief Executive Officer or the Deputy Chief Executive Officer, shall be independent within the meaning of this Policy.'' The Corporation desires to amend both documents to strike a more appropriate balance between the independence requirements and other qualifications of its directors. Specifically, the Corporation proposes to revise the independence standard in the Bylaws to

[3] *See* Securities Exchange Act Release No. 60422 (August 3, 2009), 74 FR 39725.

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] 15 U.S.C. 78s(b)(2)

[7] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NYSE Amex, a Delaware limited liability company, is an indirect wholly owned subsidiary of NYSE Euronext.

[5] *See* Section 3.4 of the ''Amended and Restated Bylaws of NYSE Euronext.'' The provisions of any other internal policy documents of the Corporation containing substantially equivalent language will be modified to conform with the proposed Bylaw and Director Independence Policy changes.

[6] Securities Exchange Act Release No. 60542 (August 19, 2009), 74 FR 43193 (August 26, 2009) (SR–NYSE–2009–60).

[7] The Commission notes that Exhibit 5 is attached to the rule filing filed with the Commission, but not to this release.

provide that, ''At least three-fourths of the members of the Board of Directors shall satisfy the independence requirements for directors of the Corporation, as modified and amended by the Board of Directors from time to time.'' [8] The three-fourths requirement will still adequately protect the independent judgment of the Board of Directors (''Board''), which the Corporation believes is essential to the quality of Board oversight, while permitting the Corporation to consider a broader range of experienced and knowledgeable individuals as directors.[9] The current Bylaw provision eliminates from consideration as potential directors of the Corporation a substantial number of individuals who could contribute significantly to the deliberations of the Corporation's Board by virtue of their knowledge, ability and experience. For example, an executive of a U.S. company listed on NYSE could not serve as a member of the Board. Such a restriction deprives the Corporation of the proven judgment and valuable insights that such individuals might contribute to the Board's decision-making process. There are other categories of individuals who fail the independence requirements for other reasons, yet who nonetheless could make significant contributions as directors of the Corporation.

As noted above, the proposed rule change is identical to a rule change filed by the NYSE that was recently approved by the Commission.

The proposed three-fourths standard for independence remains higher than the majority standard that the Commission has accepted and approved in comparable circumstances. For example, the ''Corporate Governance Guidelines'' of the NASDAQ OMX Group, Inc., which is the parent company of the NASDAQ Stock Market LLC, state, ''The Board of NASDAQ OMX is comprised of a majority of directors, who qualify as 'independent directors' under the Marketplace Rules of The NASDAQ Stock Market and Securities and Exchange Commission requirements.'' [10] The NYSE's own corporate governance standards for its listed companies provide that, ''Listed companies must have a majority of independent directors.'' [11] Finally, the Commission's own 2004 release on ''Fair Administration and Governance of Self-Regulatory Organizations'' proposed ''that the board of each exchange and association be composed of a majority of independent directors.'' [12] In the latter case, there would be no justification for holding the governing board of the ultimate parent of an exchange to a higher standard that the governing board of the exchange itself. Consequently, there is adequate precedent with respect to the proposed rule change.

The proposed amendment to the Bylaws and Director Independence Policy will not alter or amend the standards by which the Corporation makes a determination regarding whether an individual director is independent. In addition, the proposed amendment will not affect in any way the independence requirements of the Exchange with respect to its directors or the director independence requirements of any of the other self-regulatory organizations for which the Corporation is the ultimate parent or of NYSE Group, Inc., the intermediate holding company, including in each case the number of required independent directors.[13] The proposed amendment will also not affect in any way the other director qualification requirements set out in the Bylaws of the Corporation.[14]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [15] of the Act, in general, and furthers the objectives of Section 6(b)(1) [16] of the Act, which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The proposed rule change is also consistent with, and furthers the objectives of, Section 6(b)(5) [17] of the Act, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

More specifically, the Exchange believes that, because the proposed rule change will permit the Corporation to consider a broader range of experienced and knowledgeable individuals to serve as directors of the Corporation while also preserving the principle that effective boards of directors exercise independent judgment in carrying out their responsibilities, it will thereby contribute to perfecting the mechanism of a free and open market and a national market system and is also consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[8] The corresponding revised language in the Director Independence Policy would state, ''At least three-fourths of the Directors shall be independent within the meaning of this Policy.''

[9] There are currently 18 directors on the Board, including the Chief Executive Officer and the Deputy Chief Executive Officer. The Bylaws currently require 16 of the directors (*i.e.,* all but the two aforementioned employees) to be independent. The proposed amendment to the Bylaws would require a minimum of 14 of the directors to be independent.

[10] *See* ''The NASDAQ OMX Group, Inc. Corporate Governance Guidelines,'' Section III.B. (Independence of Non-Employee Directors).

[11] *See* ''NYSE Listed Company Manual,'' Section 303A.01 (Independent Directors).

[12] *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004), Section II.B.2 (Board Consisting of a Majority of Independent Directors).

[13] In its 2006 release approving the NYSE's business combination with Archipelago Holdings, Inc. (the ''Arca Approval Release''), the Commission noted that it ''* * * does not believe that there is only one method to satisfy the fair representation requirements of Section 6(b)(3) of the Act, and reviews each SRO proposal on its own terms to determine if it is consistent with the Act.'' *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (File No. SR–NYSE–2005–77), 11259, note 97. In this regard, the ''fair representation candidate'' on the NYSE board is required by the NYSE's operating agreement to be independent, and the Arca Approval Release notes that even a fully independent board could be consistent with the Act and the fair representation requirement, in which case ''the candidate or candidates selected by members would have to be independent.'' 71 FR at 11260. Among other things, the NYSE board oversees NYSE Regulation, Inc., a not-for-profit independent subsidiary that conducts the regulatory function of NYSE on its behalf pursuant to contractual and other arrangements. Consequently, the Commission stated its conclusion in the Arca Approval Release that ''[t]he NYSE's proposed requirement that 20% of the directors of the boards of directors of New York Stock Exchange LLC, NYSE Market, and NYSE Regulation be chosen by members and the means by which they will be chosen satisfies the fair representation of members in the selection of directors and the administration of the exchange consistent with the requirements in Section 6(b)(3) of the Act.'' 71 FR at 11259.

[14] *E.g.,* Section 3.2 (Certain Qualifications for the Board of Directors) of the Bylaws.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(1).

[17] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2009–60 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–60. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2009–60 and should be submitted on or before October 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22370 Filed 9–16–09; 8:45 am]

BILLING CODE 8010–01–P

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60646; File No. SR–NYSEArca–2009–82]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NYSE Arca, Inc. in Connection With the Proposal of NYSE Euronext To Require That at Least Three-Fourths of Its Directors Satisfy Independence Requirements

September 10, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 4, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is submitting this rule filing in connection with the proposal of its ultimate parent, NYSE Euronext (the ''Corporation''),[4] to amend its bylaws and Director Independence Policy to require that at least three-fourths of the members of its Board of Directors shall satisfy the independence requirements for directors of the Corporation. Currently the bylaws and Director Independence Policy require that all members of the Board of Directors, other than the Chief Executive Officer and the Deputy Chief Executive Officer, shall satisfy the independence requirements.[5] The proposed rule change is identical to a rule change filed by the New York Stock Exchange LLC (''NYSE'') that was recently approved by the Commission.[6] The text of the proposed rule change is attached hereto as Exhibit 5,[7] and is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[4] NYSE Arca, a Delaware corporation, is an indirect wholly-owned subsidiary of NYSE Euronext.

[5] *See* Section 3.4 of the ''Amended and Restated Bylaws of NYSE Euronext.'' The provisions of any other internal policy documents of the Corporation containing substantially equivalent language will be modified to conform with the proposed Bylaw and Director Independence Policy changes.

[6] Securities Exchange Act Release No. 60542 (August 19, 2009), 74 FR 43193 (August 26, 2009) (SR–NYSE–2009–60).

[7] The Commission notes that Exhibit 5 is attached to the rule filing filed with the Commission, but not to this release.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Bylaws of the Corporation, which is the ultimate parent company of the Exchange, require that ''all members of the Board of Directors, other than the Chief Executive Officer and the Deputy Chief Executive Officer, shall satisfy the independence requirements for directors of the Corporation, as modified and amended by the Board of Directors from time to time.'' Similarly, the Director Independence Policy of the Corporation states that ''[e]ach Director (other than the Chief Executive Officer and the Deputy Chief Executive Officer), including the Chairman of the Board and the Deputy Chairman of the Board if not also the Chief Executive Officer or the Deputy Chief Executive Officer, shall be independent within the meaning of this Policy.'' The Corporation desires to amend both documents to strike a more appropriate balance between the independence requirements and other qualifications of its directors. Specifically, the Corporation proposes to revise the independence standard in the Bylaws to provide that, ''At least three-fourths of the members of the Board of Directors shall satisfy the independence requirements for directors of the Corporation, as modified and amended by the Board of Directors from time to time.'' [8] The three-fourths requirement will still adequately protect the independent judgment of the Board of Directors (''Board''), which the Corporation believes is essential to the quality of Board oversight, while permitting the Corporation to consider a broader range of experienced and knowledgeable individuals as directors.[9] The current Bylaw provision eliminates from consideration as potential directors of the Corporation a substantial number of individuals who could contribute significantly to the deliberations of the Corporation's Board by virtue of their knowledge, ability and experience. For example, an executive of a U.S. company listed on NYSE could not serve as a member of the Board. Such a restriction deprives the Corporation of the proven judgment and valuable insights that such individuals might contribute to the Board's decision-making process. There are other categories of individuals who fail the independence requirements for other reasons, yet who nonetheless could make significant contributions as directors of the Corporation.

As noted above, the proposed rule change is identical to a rule change filed by the NYSE that was recently approved by the Commission.

The proposed three-fourths standard for independence remains higher than the majority standard that the Commission has accepted and approved in comparable circumstances. For example, the ''Corporate Governance Guidelines'' of the NASDAQ OMX Group, Inc., which is the parent company of the NASDAQ Stock Market LLC, state, ''The Board of NASDAQ OMX is comprised of a majority of directors, who qualify as ''independent directors'' under the Marketplace Rules of The NASDAQ Stock Market and Securities and Exchange Commission requirements.'' [10] The NYSE's own corporate governance standards for its listed companies provide that, ''Listed companies must have a majority of independent directors.'' [11] Finally, the Commission's own 2004 release on ''Fair Administration and Governance of Self-Regulatory Organizations'' proposed ''that the board of each exchange and association be composed of a majority of independent directors.'' [12] In the latter case, there would be no justification for holding the governing board of the ultimate parent of an exchange to a higher standard than the governing board of the exchange itself. Consequently, there is adequate precedent with respect to the proposed rule change.

The proposed amendment to the Bylaws and Director Independence Policy will not alter or amend the standards by which the Corporation makes a determination regarding whether an individual director is independent. In addition, the proposed amendment will not affect in any way the independence requirements of the Exchange with respect to its directors or the director independence requirements of any of the other self-regulatory organizations for which the Corporation is the ultimate parent or of NYSE Group, Inc., the intermediate holding company, including in each case the number of required independent directors.[13] The proposed amendment will also not affect in any way the other director qualification requirements set out in the Bylaws of the Corporation.[14]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [15] of the Act, in general, and furthers the objectives of Section 6(b)(1) [16] of the Act, which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The proposed rule change is also consistent with, and furthers the objectives of, Section 6(b)(5) [17] of the Act, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in

[8] The corresponding revised language in the Director Independence Policy would state, ''At least three-fourths of the Directors shall be independent within the meaning of this Policy.''

[9] There are currently 18 directors on the Board, including the Chief Executive Officer and the Deputy Chief Executive Officer. The Bylaws currently require 16 of the directors (*i.e.*, all but the two aforementioned employees) to be independent. The proposed amendment to the Bylaws would require a minimum of 14 of the directors to be independent.

[10] *See* ''The NASDAQ OMX Group, Inc. Corporate Governance Guidelines,'' Section III.B. (Independence of Non-Employee Directors).

[11] *See* ''NYSE Listed Company Manual,'' Section 303A.01 (Independent Directors).

[12] *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004), Section II.B.2 (Board Consisting of a Majority of Independent Directors).

[13] In its 2006 release approving the NYSE's business combination with Archipelago Holdings, Inc. (the ''Arca Approval Release''), the Commission noted that it ''* * * does not believe that there is only one method to satisfy the fair representation requirements of Section 6(b)(3) of the Act, and reviews each SRO proposal on its own terms to determine if it is consistent with the Act.'' *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (File No. SR–NYSE–2005–77), 11259, note 97. In this regard, the ''fair representation candidate'' on the NYSE board is required by the NYSE's operating agreement to be independent, and the Arca Approval Release notes that even a fully independent board could be consistent with the Act and the fair representation requirement, in which case ''the candidate or candidates selected by members would have to be independent.'' 71 FR at 11260. Among other things, the NYSE board oversees NYSE Regulation, Inc., a not-for-profit independent subsidiary that conducts the regulatory function of NYSE on its behalf pursuant to contractual and other arrangements. Consequently, the Commission stated its conclusion in the Arca Approval Release that ''[t]he NYSE's proposed requirement that 20% of the directors of the boards of directors of New York Stock Exchange LLC, NYSE Market, and NYSE Regulation be chosen by members and the means by which they will be chosen satisfies the fair representation of members in the selection of directors and the administration of the exchange consistent with the requirements in Section 6(b)(3) of the Act.'' 71 FR at 11259.

[14] *E.g.*, Section 3.2 (Certain Qualifications for the Board of Directors) of the Bylaws.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(1).

[17] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

More specifically, the Exchange believes that, because the proposed rule change will permit the Corporation to consider a broader range of experienced and knowledgeable individuals to serve as directors of the Corporation while also preserving the principle that effective boards of directors exercise independent judgment in carrying out their responsibilities, it will thereby contribute to perfecting the mechanism of a free and open market and a national market system and is also consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–82 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–82. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–82 and should be submitted on or before October 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22369 Filed 9–16–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60644; File No. SR–NYSE–2009–83]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Its Initial Listing Fees for Operating Companies

September 10, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 26, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of initial listing fees for operating companies as set forth in Section 902.03 of the Listed Company Manual (the ''Manual''). A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its initial listing fees for operating companies set forth in Section 902.03 of the Manual, with retroactive application to any initial listing of new classes of securities on or after the date of original submission of this filing.

Currently, companies pay initial listing fees according to the following schedule: $0.0048 per share for up to and including 75 million shares, $0.00375 per share for any additional shares over 75 million shares up to and including 300 million shares, and $0.0019 per share for any additional shares over 300 million shares (the ''Listing Fee Schedule''). The first time that an issuer lists a class of common shares, the issuer is also subject to a one-time special charge of $37,500, in addition to fees calculated according to the Listing Fee Schedule. The minimum and maximum listing fees applicable the first time an issuer lists a class of common shares are $150,000 and $250,000, respectively, which amounts include the one-time special charge of $37,500.

Solely with respect to shares listed at the time a class of common shares is first listed on the Exchange, the Exchange proposes to replace the Listing Fee Schedule with a flat rate initial listing fee of $0.0032 per share.[4] The one-time special charge of $37,500 will be increased to $50,000 and the minimum initial listing fee will be decreased from $150,000 to $125,000.[5] No change is being made to the maximum initial listing fee of $250,000 at this time. The existing Listing Fee Schedule (the ''Listing of Additional Shares Fee Schedule'') will remain in effect for the listing of additional shares of a class of previously listed securities. In establishing at which tier of the Listing of Additional Shares Fee Schedule a company will pay fees with respect to additional shares of a previously listed class, the Exchange will include the shares with respect to which the company paid fees at the time of initial listing of that class in calculating the fees for additional shares.

For example: At the time Company A first lists its common stock on the Exchange, its initial listing application covers 30 million shares of its common stock. Company A must pay initial listing fees of $146,000, i.e., the one-time special charge of $50,000 plus $96,000 (30 million shares multiplied by $0.0032 per share). For comparison, the following is how Company A would be charged for the initial listing application under the current Listing Fee Schedule: $181,500, i.e., the one-time special charge of $37,500 plus $144,000 (30 million shares multiplied by $0.0048 per share).

If Company A subsequently issues an additional 100 million shares, Company A will pay fees under the first tier of the Listing of Additional Shares Fee Schedule for 45 million shares (representing the 75 million shares that are subject to the first tier of fees minus the 30 million shares issued at the time of original listing) and will pay fees under the second tier of the Listing of Additional Shares Fee Schedule for 55 million shares (representing the remainder of the shares listed in the supplemental listing application). Therefore, in connection with the supplemental listing application, Company A must pay listing fees for the listing of additional shares of $422,250, consisting of (i) $216,000 (i.e., 45 million shares multiplied by $0.0048 per share) plus (ii) $206,250 (i.e., 55 million shares multiplied by $0.00375 per share).[6]

The proposed amendments to the Exchange's initial listing fees will reduce the initial listing fees payable by all companies whose fees are not limited by the $250,000 maximum and no company will pay higher initial listing fees as a result of the proposed amendment. These lower initial listing fees will enable the Exchange to compete more effectively on a cost basis with other securities exchanges for listings of companies undertaking initial public offerings. In particular, the Exchange notes that smaller companies than have historically listed on the Exchange now qualify for listing under the recently adopted Assets and Equity Test[7] and many of these companies would benefit from the lower minimum initial listing fee.

The proposed new initial listing fees for the listing of new classes of securities are not inequitable or unfairly discriminatory, as all companies will be subject to the same fee schedule. While companies that are subject to the $250,000 maximum fee under both the current and the proposed fee schedule do not benefit from the reduction in fees, this is appropriate because these companies already benefit from a lower effective listing fee per share than other companies.

The Exchange proposes to apply the listing fees as amended by this filing retroactively to any new classes of common or preferred equity securities listed on or after the date of original submission of this filing. The Exchange believes this approach is appropriate, as it will enable companies to benefit from any applicable reduction in listing fees without having to delay their listing until after Commission approval of the filing solely for the purpose of benefitting from that fee reduction. As noted above, the proposed amendment will lower the initial listing fees payable by all companies whose fees are not limited by the $250,000 maximum and no company will pay higher initial listing fees as a result of the proposed amendment.

The reduction in the Exchange's listing fee revenue as a result of the proposed rule change is not expected to be substantial and the Exchange will continue to have sufficient revenue to continue to adequately fund its regulatory activities.

2. Statutory Basis

The bases under the Act for this proposed rule change are the requirement under Section 6(b)(4)[8] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members, listed companies and other persons using its facilities and the requirement under Section 6(b)(5)[9] that an exchange have rules that are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed new schedule of initial listing fees represents an equitable allocation of fees

[4] Initial listing fees for the following types of listings will also be charged at a rate of $0.0032 per share: (i) At the time it first lists, an issuer lists one or more classes of preferred stock or warrants, whether or not common shares are also listed at that time; and (ii) once listed, an issuer lists a new class of preferred stock or warrants.

[5] The increase in the one-time special charge is intended to offset a portion of the reduction in listing fee revenue attributable to the proposed lower listing fee per share and proposed lower minimum listing fee.

[6] The charge for the supplemental listing application would be the same under both the existing and the proposed listing fee schedule. Some clarifying changes have been made to the Listing of Additional Shares Fee Schedule as presented in Section 902.03, but no substantive changes are being made to the fees charged in connection with the listing of additional shares pursuant to a supplemental listing application.

[7] *See* Securities Exchange Act Release No. 58934 (November 12, 2008), 73 FR 69708 (November 19, 2008) (SR–NYSE–2008–98).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

among its listed companies, as all companies will be subject to the same fee schedule. The proposed new initial listing fees for the listing of new classes of securities are not inequitable or unfairly discriminatory, as all companies will be subject to the same fee schedule. While companies that are subject to the $250,000 maximum fee under both the current and the proposed fee schedule do not benefit from the reduction in fees, this is appropriate because these companies already benefit from a lower effective listing fee per share than other companies.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2009–83 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–83. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–83 and should be submitted on or before October 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22368 Filed 9–16–09; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60641; File No. SR–CBOE–2009–064]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to FLEX Equity Option Opening Transactions

September 9, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 2, 2009, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the period for its pilot program regarding the minimum value size for an opening transaction in FLEX Equity Option[5] series (''Pilot Program''), which would otherwise expire on September 4, 2009, through February 28, 2010. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] FLEX Equity Options are flexible exchange-traded options contracts which overlie equity securities. FLEX Equity Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 4, 2008, the Commission approved the Pilot Program.[6] The Pilot Program modifies the minimum value size for an opening transaction (other than FLEX Quotes responsive to a FLEX Request for Quotes) in any FLEX Equity Option series in which there is no open interest at the time the Request for Quotes is submitted. Prior to the initiation of the Pilot Program, the minimum opening transaction value size in the case of a FLEX Equity Options series was the lesser of (i) 250 contracts or (ii) the number of contracts overlying $1 million in the underlying securities.[7] The Pilot Program modifies the minimum opening size formula by reducing the ''250 contracts'' component to ''150 contracts'' (the $1 million underlying value component continues to apply unchanged).[8]

The Pilot Program is set to expire on September 4, 2009. CBOE believes the Pilot Program has been successful and well received by its members and the investing public. Thus, the purpose of this proposed rule change is to extend the Pilot Program through February 28, 2010. This is merely an extension. The Exchange is not seeking any other changes to the Pilot Program at this time.

In support of the proposed rule change, the Exchange is submitting to the Commission a Pilot Program report (the ''Report'') detailing the Exchange's experience with the Pilot Program. Specifically, the Report contains (i) data and analysis on the open interest and trading volume in FLEX Equity Options for which series were opened with a minimum opening size of 150 to 249 contracts and less than $1 million in underlying value; and (ii) analysis on the types of investors that initiated opening FLEX Equity Options transactions (i.e., institutional, high net worth, or retail, if any). The Exchange is submitting the Report under separate cover and seeking confidential treatment under the Freedom of Information Act.

If the Exchange were to propose another extension or an expansion of the Pilot Program, or should the Exchange propose to make the Pilot Program permanent, the Exchange would submit, along with any filing proposing such amendments to the Pilot Program, another Report that would provide an analysis of the program covering the extended period during which the Pilot Program is in effect. The Report would include the same data and analysis as described in the paragraph above for the extended Pilot Program period. The Report, along with any filing to extend or permanently implement the Pilot Program, would be submitted to the Commission at least forty-five (45) days prior to the new expiration date of the Pilot Program.

The Exchange believes there is sufficient investor interest and demand to extend the Pilot Program. The Exchange believes that the Pilot Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives.

2. Statutory Basis

In providing FLEX-participating members and their customers greater flexibility to trade FLEX Equity Options by lowering from 250 to 150 the minimum number of contracts required to open a series, the Exchange believes the proposed rule change is consistent with the Act[9] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extension of the Pilot Program will result in a continuing benefit to investors, by allowing them additional means to manage their risk exposures and carry out their investment objectives, and will allow the Exchange to further study investor interest in the Pilot Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[12] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

Under Rule 19b–4(f)(6) of the Act,[15] a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date so that the pilot may continue without interruption.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the original pilot program was published for notice and comment and no comments were

[6] *See* Securities Exchange Act Release No. 57429 (March 4, 2008), 73 FR 13058 (March 11, 2008) (SR–CBOE–2006–36).

[7] Under this prior formula, an opening transaction in a FLEX Equity series in a stock priced at $40 or more would reach the $1 million limit before it would reach the contract size limit, *i.e.,* 250 contracts times the multiplier (100) times the stock price ($40) equals $1 million in underlying value. For a FLEX Equity series in a stock priced at less than $40, the 250 contract size limit applies.

[8] Under the Pilot Program formula, an opening transaction in a FLEX Equity series in a stock priced at approximately $66.67 or more would reach the $1 million limit before it would reach the contract size limit, *i.e.,* 150 contracts times the multiplier (100) times the stock price ($66.67) equals just over $1 million in underlying value. For a FLEX Equity series in a stock priced at less than $66.67, the 150 contract size limit would apply.

[9] 15 U.S.C. 78s(b)(1).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] The Exchange fulfilled this five day requirement.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] *Id.*

received.[16] In addition, extending the pilot through February 28, 2010 does not raise any new or novel regulatory issues that were not previously considered in approving the original pilot. Based on the above, the Commission designates the proposal as operative upon filing.[17]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml;* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2009–064 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–064. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–064 and should be submitted on or before October 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22367 Filed 9–16–09; 8:45 am]

BILLING CODE 8010–01–P

[16] Securities Exchange Act Release No. 57429 (March 4, 2008), 73 FR 13058 (March 11, 2008).

[17] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). *See also* 17 CFR 200.30–3(a)(59).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60649; File No. SR–NYSE–2009–93]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending Until September 15, 2009, the Operation of Interim NYSE Rule 128 Which Permits the Exchange To Cancel or Adjust Clearly Erroneous Executions if They Arise Out of the Use or Operation of Any Quotation, Execution or Communication System Owned or Operated by the Exchange, Including Those Executions That Occur in the Event of a System Disruption or System Malfunction

September 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 8, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend until September 15, 2009, the operation of interim NYSE Rule 128 (''Clearly Erroneous Executions for NYSE Equities'') which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend until September 15, 2009, the operation of interim NYSE Rule 128 (''Clearly Erroneous Executions for NYSE Equities'') which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction.

Prior to the implementation of NYSE Rule 128 on January 28, 2008,[4] the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 57323 (February 13, 2008), 73 FR 9371 (February 20, 2008) (SR–NYSE–2008–09).

NYSE did not have a rule providing the Exchange with the authority to cancel or adjust clearly erroneous trades of securities executed on or through the systems and facilities of the NYSE.

In order for the NYSE to be consistent with other national securities exchanges which have some version of a clearly erroneous execution rule, the Exchange is drafting an amended clearly erroneous rule which will accommodate such other exchanges but will be appropriate for the NYSE market model.

The NYSE notes that the Commission approved an amended clearly erroneous execution rule for Nasdaq in May 2008.[5] On July 28, 2008, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until October 1, 2008[6] in order to review the provisions of Nasdaq's clearly erroneous rule and to consider integrating similar standards into its own amendment to Rule 128. On October 1, 2008,[7] the Exchange filed with the SEC a further request to extend the operation of interim Rule 128 until January 9, 2009 in order to consider integrating similar standards into the amendment to Rule 128. On January 9, 2009,[8] the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until March 9, 2009, indicating that the Exchange was still in the process of reviewing the Nasdaq rule with a view towards incorporating certain provisions into the amendment of interim Rule 128.

On February 10, 2009, NYSE Arca submitted a proposal to the SEC to amend its clearly erroneous rule. The NYSE Arca proposed rule differed in certain respects from the Nasdaq clearly erroneous rule. On March 9, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until June 9, 2009[9] to finalize review of NYSE Arca's proposed amended CEE rule, which included market wide CEE initiatives, to determine if it was appropriate to incorporate such provisions into the Rule 128 amendment.

Thereafter, on April 24, 2009, NYSE Arca filed a revised rule change with the Commission to amend its clearly erroneous rule (NYSE Arca Rule 7.10).[10] The Exchange was in the process of finalizing its review of NYSE Arca's revised CEE rule change, which also included market wide CEE initiatives, to determine if it was appropriate to incorporate all such provisions into NYSE's interim Rule 128 amendment. On June 9, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until July 15, 2009[11] to finalize review of NYSE Arca's proposed amended CEE rule. On July 15, 2009[12] the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 1, 2009 to finalize review of NYSE Arca's proposed amended CEE rule. On July 31, 2009 the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 10, 2009[13] to finalize review of NYSE Arca's proposed amended CEE rule. On August 11, 2009 the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 21, 2009[14] to finalize review of NYSE Arca's proposed amended CEE rule. On August 21, 2009 the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 31, 2009[15] to finalize review of NYSE Arca's proposed amended CEE rule. On August 31, 2009 the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until September 8, 2009[16] to finalize review of NYSE Arca's proposed amended CEE rule.

The Exchange anticipates finalizing proposed rule text of its clearly erroneous execution rule shortly, and is, therefore, requesting to extend the operation of interim Rule 128 until September 15, 2009. Prior to September 15, 2009, the Exchange intends to formally file a 19b–4 rule change amending interim Rule 128.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'')[17] for this proposed rule change is the requirement under Section 6(b)(5)[18] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

As articulated more fully in the ''Purpose'' Section above, the proposed rule would place the NYSE on equal footing with other national securities exchanges. This will promote the integrity of the market and protect the public interest, since it would permit all exchanges to cancel or adjust clearly erroneous trades when such trades occur, rather than canceling them on all other markets, but leaving them standing on only one market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20]

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the

[5] *See* Securities Exchange Act Release No. 57826 (May 15, 2008), 73 FR 29802 (May 22, 2008) (SR–NASDAQ–2007–001).

[6] *See* Securities Exchange Act Release No. 58328 (August 8, 2008), 73 FR 47247 (August 13, 2008) (SR–NYSE–2008–63).

[7] *See* Securities Exchange Act Release No. 58732 (October 3, 2008), 73 FR 61183 (October 15, 2008) (SR–NYSE–2008–99).

[8] *See* Securities Exchange Act Release No. 59255 (January 15, 2009) 74 FR 4496 (January 26, 2009) (SR–NYSE–2009–02).

[9] *See* Securities Exchange Act Release No. 59581 (March 9, 2009) 74 FR 12431 (March 24, 2009) (SR–NYSE–2009–26).

[10] *See* Securities Exchange Act Release No. 59838 (April 28, 2009) 74 FR 20767 (May 5, 2009) (SR–NYSEArca–2009–36) (*See* NYSE Arca Rule 7.10).

[11] *See* Securities Exchange Act Release No. 60131 (June 17, 2009) 74 FR 30196 (June 24, 2009) (SR–NYSE–2009–57).

[12] *See* Securities Exchange Act Release No. 60312 (July 15, 2009) 74 FR 36298 (July 22, 2009) (SR–NYSE–2009–70).

[13] *See* Securities Exchange Act Release No. 60419 (August 7, 2009) 74 FR 39987 (August 10, 2009) (SR–NYSE–2009–79).

[14] *See* Securities Exchange Act Release No. 60478 (August 11, 2009) 74 FR 41769 (August 18, 2009) (SR–NYSE–2009–81).

[15] *See* Securities Exchange Act Release No. 60563 (August 21, 2009) 74 FR 44423 (August 28, 2009) (SR–NYSE–2009–87).

[16] *See* Securities Exchange Act Release No. 60597 (August 31, 2009) 74 FR 46281 (September 8, 2009) (SR–NYSE–2009–92).

[17] 15 U.S.C. 78f(a) [sic].

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day pre-filing period in this case.

Act[21] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[22] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE requests that the Commission waive the 30-day operative delay because the Exchange believes that the absence of such a rule in an automated and fast-paced trading environment poses a danger to the integrity of the markets and the public interest. NYSE notes that immediate effectiveness of the proposed rule change will immediately and timely enable NYSE to cancel or adjust clearly erroneous trades that may present a risk to the integrity of the equities markets and all related markets. The Commission believes that waiving the 30-day operative delay[23] is consistent with the protection of investors and the public interest because such waiver will permit the Exchange to continue operation of interim NYSE Rule 128 on an uninterrupted basis, and therefore designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2009–93 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–93. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2009–93 and should be submitted on or before October 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22390 Filed 9–16–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60654; File No. SR–ISE–2009–64]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to Historical ISE Open/Close Trade Profile Fees

September 11, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to adopt reduced subscription fees for academics for the sale of historical open and close volume data on ISE listed options. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE currently sells a market data offering comprised of the entire opening and closing trade data of ISE listed options of both customers and firms, referred to by the Exchange as the ISE Open/Close Trade Profile.[3] The ISE Open/Close Trade Profile offering is subdivided by origin code (i.e., customer or firm) and the customer data is then further subdivided by order size. The volume data is summarized by day and series (i.e., symbol, expiration date, strike price, call or put). The ISE Open/Close Trade Profile enables subscribers to create their own proprietary put/call calculations. The data is compiled and formatted by ISE as an end of day file. This market data offering is currently

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6).

[23] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56254 (August 15, 2007), 72 FR 47104 (August 22, 2007) (Approving SR–ISE–2007–70).

available to both members and non-members on annual subscription basis. The current subscription rate for both members and non-members is $600 per month.

ISE also sells historical ISE Open/Close Trade Profile, a market data offering comprised of the entire opening and closing trade data of both customers and firms that dates back to May 2005, to both members and non-members, on an ad-hoc basis or as a complete set that dates back to May 2005. Ad-hoc subscribers can purchase this data for any number of months, beginning from May 2005 through the current month. Alternatively, subscribers can purchase the entire set of this data, beginning from May 2005 through the current month. The historical ISE Open/Close Trade Profile is compiled and formatted by ISE and sold as a zipped file. ISE charges ad-hoc subscribers $600 per request for each month of data and a discounted fee of $500 per request per month for subscribers that want the complete set, i.e., from May 2005 to the present month.

The Exchange now proposes to adopt reduced fees for subscriptions to historical ISE Open/Close Trade Profile by academic institutions. Occasionally, academic institutions inquire with the Exchange about subscribing to the historical ISE Open/Close Trade Profile for research purposes but are not inclined to pay the full price. In order to encourage and promote academic studies of its market data, ISE proposes to charge a flat rate of $500 for up to 12 months of data or $1,000 for the complete data set. Academic institutions may not use the data in support of actual securities trading. The proposed discount applies only to the market data fees and does not cover any access or telecommunication charges that may be incurred by an academic institution. Moreover, with the adoption of reduced fees for academic institutions, ISE is not waiving any of its contractual rights and all academic institutions that subscribe to this data will be required to execute the appropriate subscriber agreement.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Exchange Act'') for this proposed rule change is the requirement under Section 6(b)(4), that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange notes that the proposed fees are reasonable and equitable in that they are deeply discounted and apply equally to all academic institutions as long as the purpose for subscribing to the data is educational and not vocational. Further, the Exchange believes the proposed rule filing will promote academic research of market data which can be of benefit to all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2009–64 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–64. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–ISE–2009–64 and should be submitted on or before October 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22391 Filed 9–16–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60634; File No. SR–BX–2009–055]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Retroactively Correct an Error in Rule 7018

September 8, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 28, 2009, NASDAQ OMX BX, Inc.

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''BX'')[3] filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX is filing a proposed rule change to apply retroactively to the period from April 1, 2009 through August 16, 2009 the correction made by SR–BX–2009–049 of a typographical error formerly in Rule 7018. There is no proposed rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

BX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX recently submitted a filing to correct a typographical error in Rule 7018.[4] That filing was immediately effective upon the date of its filing, August 17, 2009. The purpose of this filing is to apply the correction of the typographical error retroactively to the period from April 1, 2009 through August 16, 2009.

In SR–BX–2009–018,[5] BX modified its pricing for execution of orders in securities listed on The NASDAQ Stock Market (''NASDAQ'') and the New York Stock Exchange (''NYSE'') by, among other things, replacing a charge to access liquidity of $0.0014 per share executed with a credit of $0.0006 per share executed. This change was accurately described in the ''Purpose'' section of BX's Form 19b–4 filing,[6] in the Commission's notice of the filing on the SEC Web site[7] and in the **Federal Register**,[8] in widely disseminated announcements of the pricing change,[9] and in the pricing schedule that appears on BX's market Web site.[10] However, due to a typographical error, the credit incorrectly appeared as ''$0.006'' in Exhibit 5 to the filing.

BX has been billing members in accordance with the correct fee since the effective date of the change in April 2009, and accordingly believes that all of its members that trade on the NASDAQ OMX BX Equities System are cognizant of the correct fee. BX submitted SR–BX–2009–049 on an immediately effective basis to correct the error, and is now submitting this filing to seek Commission approval to apply the correction retroactively to the period from April 1, 2009 through August 16, 2009.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Section 6(b)(5) of the Act,[12] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change will ensure that a recently filed correction of a typographical error in BX Rule 7018 is applied retroactively throughout the entire period when the error was in the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–BX–2009–055 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–055. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for

[3] The Commission notes that BX also refers to itself as the ''Exchange'' in this proposed rule change.

[4] SR–BX–2009–049 (August 17, 2009).

[5] Securities Exchange Act Release No. 59682 (April 1, 2009), 74 FR 16015 (April 8, 2009) (SR–BX–2009–018).

[6] *See http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/pdf/bx-filings/2009/SR-BX&-200-018.pdf.*

[7] *See http://www.sec.gov/rules/sro/bx/2009/34-59682.pdf.*

[8] *See* Securities Exchange Act Release No. 59682 (April 1, 2009), 74 FR 16015 (April 8, 2009) (SR–BX–2009–018).

[9] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2009-16.*

[10] *See http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing.*

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–055 and should be submitted on or before October 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22366 Filed 9–16–09; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2009–0063]

Notice of Senior Executive Service Performance Review Board Membership

AGENCY: Social Security Administration.

ACTION: Notice of Senior Executive Service Performance Review Board Membership.

Title 5, U.S. Code 4314 (c)(4), requires that the appointment of Performance Review Board members be published in the **Federal Register** before service on said Board begins.

The following persons will serve on the Performance Review Board which oversees the evaluation of performance appraisals of Senior Executive Service members of the Social Security Administration:

Sean Brune *
JoEllen Felice
Alan Heim *
Pete Herrera
Bonnie Kind *
Eileen McDaniel
Marcia Mosley
Steven Patrick *
Ronald Raborg
Roy Snyder
Tina Waddell
Daryl Wise *

* New Member

Dated: September 11, 2009

Reginald F. Wells,

Deputy Commissioner for Human Resources.

[FR Doc. E9–22394 Filed 9–16–09; 8:45 am]

BILLING CODE 4191–02–P

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending September 5, 2009

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2009–0213.

Date Filed: September 3, 2009.

Parties: Members of the International Air Transport Association.

Subject: PTC3 South Asian Subcontinent—South East Asia. PTC3 Within South East Asia except between Malaysia and Guam PTC3 South East Asia—Japan, Korea except between Korea (Rep. of) and Guam, Northern Mariana Islands Special Passenger Amending Resolution from Viet Nam to South Asian Subcontinent, South East Asia, Japan, Korea (Memo 1316).

Intended effective date: 15 September 2009.

Renee V. Wright,

Program Manager, Docket Operations Federal Register Liaison.

[FR Doc. E9–22418 Filed 9–16–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: Systems of Records

AGENCY: Maritime Administration (MARAD), DOT.

ACTION: Notice to establish systems of records.

SUMMARY: DOT intends to establish systems of records under the Privacy Act of 1974.

DATES: *Effective Date:* October 27, 2009. If no comments are received, the proposal will become effective on the above date. If comments are received, the comments will be considered and, where adopted, the documents will be republished with changes.

ADDRESSES: Send comments to: Habib Azarsina, Departmental Privacy Officer, S–80, United States Department of Transportation, Office of the Secretary of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, or *habib.azarsina@dot.gov.*

FOR FURTHER INFORMATION CONTACT: Habib Azarsina, Departmental Privacy Officer, S–80, United States Department of Transportation, Office of the Secretary of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, telephone 202–366–1965 or *habib.azarsina@dot.gov.*

SUPPLEMENTARY INFORMATION: The Department of Transportation system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from the above mentioned address.

System Number:

DOT/MARAD 31

SYSTEM NAME:

Mariner Outreach System (MOS).

SECURITY CLASSIFICATION:

Unclassified, Sensitive.

SYSTEM LOCATION:

NCCIPS Data Center Loading Dock, Cypress Loop Road, Building 9323, Stennis Space Center, MS 39529.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

The Mariner Outreach System (MOS) contains information about U.S. Coast Guard (USCG) mariners. MOS provides a systematic way to monitor the adequacy of our nation's merchant mariner pool and to track and maintain contact information and qualifications of mariners. Therefore, there is the potential for the following categories of individual's information to be covered by this system:

- Data about mariners who hold or previously held a USCG credential.

CATEGORIES OF RECORDS IN THE SYSTEM:

MOS contains the following types of information:

- Information from the Merchant Mariner License and Documentation (MMLD) including personal data such as last 4 digits of SSN, date of birth (DOB), place of birth (POB).
- Mariners updated contact information, *e.g.,* address, e-mail(s), and phone number(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Directive #28 (October 5, 1989), Merchant Marine Act of 1936; Maritime Security Act of 2003 (Pub. L. 108–136).

PURPOSES:

MOS is an invaluable tool for MARAD and its partners to make valid vessel and human resources projections; identify potential mariner shortfalls; allow mariners to provide up-to-date/

accurate contact information; and to facilitate crewing of vessels should a mariner shortage occur.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office of Maritime Workforce Development's routine use of information is for resource projection, maintain contact information and facilitate filling shortages. The merchant mariners who hold or previously held a USCG credential can self-register and update his/her own contact information after registration.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored in this system on a dedicated server.

RETRIEVABILITY:

Registered mariners can only view their own personal records by user ID, obtained from initial self-registration, and password.

Authorized administrator at Maritime Workforce Development can retrieve data for analysis, resource protection, and facilitation of crewing of vessels, as necessary, by last name, first name and last 4-digits of social security number.

SAFEGUARDS:

The production environment is located in a secure zone behind a firewall, called a Demilitarized Zone (DMZ) that enables secure connections from the Internet.

DOT Crisis and Security Management Center (CSMC) monitors all traffic within the department looking for any possible attacks. CSMC works with the modes during possible attacks. MARAD has Cisco ASA devices to monitor events on the system, detect attacks, and provide identification of unauthorized use of the system.

The Stennis Data Center in Mississippi hosting MOS is occupied by the Department of Navy contractor personnel and is not open to the general public. The Data Center is uniquely constructed. It was formerly an ammunition manufacturing facility and as such, its external walls are constructed completely of steel reinforced concrete that is 12 to 48 inches thick. It has no windows. The construction materials as well as its location inside of the Stennis Space Center significantly reduce its vulnerability to most conventional types of external threats *i.e.* vehicle born improvised explosive devices (VBIEDs), burglary, trespassing, and unauthorized entry.

The facility operates in a secure closed manner. Outside personnel do not have unescorted access to the facility. Mail deliveries are received by facility personnel who screen all material before being brought into the facility. All equipment is delivered and sent through a secure loading dock. All equipment is installed either by or under the supervision of facility personnel.

The test and development environments are available only to local personnel and selected users connecting via a Virtual Private Network.

System data is protected by daily backups to Linear Tape Open (LTO3) tape. In addition, daily backups of data to a local server hard drive, which are kept for a period of 14 days to safeguard the data.

RETENTION AND DISPOSAL:

The files are retained and disposed of according to the MARAD Records Schedule, according to the National Archives and Records Administration, and DOT policy.

SYSTEM OWNER(S) AND ADDRESS:

Director, Office of Maritime Workforce Development, Maritime Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. 202–366–5469.

NOTIFICATION PROCEDURE:

Individuals wishing to know if their records appear in this system may make a request in writing to the FOIA/Privacy Act Officer, Maritime Administration, 1200 New Jersey Ave, SE., W26–499, Washington, DC 20590. The request must include the requester's name, mailing address, telephone number and/or e-mail address, a description and, if possible, the location of the records requested, and verification of identity (such as, a statement under penalty or perjury that the requester is the individual who he or she claims to be).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system should apply to the FOIA/Privacy Act Officer, following the same procedure as indicated under ''Notification procedure.'' Mariners can log into the system to view their documents.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest the content of information about them in this system should apply to the FOIA/Privacy Act Officer, following the same procedure as indicated under ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in MOS is obtained from U.S. Coast Guard (USCG) and registered merchant mariners.

The data from USCG include: (a) MMLD data which contain credentials information, *e.g.,* merchant mariners credentials (MMC), merchant mariners document (MMD), merchant mariners' standards, training certification, and watch keeping (STCW), merchant mariners' license, certificate of registry (COR); (b) Personal info: Name (*e.g.,* first name, middle name, last name, e-mail addresses, resident address, citizenship, personal contact information); (c) merchant mariners' sea service records.

Registered merchant mariners data source: During self-registration, the merchant mariner enters into MOS his/her last 4 digits of SSN, first name, last name, place of birth, date of birth, and the password of his/her choice. A registered mariner can use the user id and password to update his/her own information later on.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

System Number:

DOT/MARAD 32

SYSTEM NAME:

Maritime Service Compliance System (MSCS).

SECURITY CLASSIFICATION:

Unclassified, Sensitive.

SYSTEM LOCATION:

NCCIPS Data Center Loading Dock, Cypress Loop Road, Building 9323, Stennis Space Center, MS 39529.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

The following categories of individuals are covered by this system:

- Current and former students of the U.S. Merchant Marine Academy (USMMA) at Kings Point, NY.
- Current and former students enrolled in the Student Incentive Payment (SIP) program at the six (6) State Maritime Academies (SMAs).

CATEGORIES OF RECORDS IN THE SYSTEM:

MSCS contains the following types of information:

- Current SMA SIP and USMMA students' name, address, SSN, date of birth (DOB) and graduation date.
- Former SMA SIP and USMMA students' name, address, SSN, DOB.
- Data to determine former student compliance with obligation requirements.

• Data to determine SIP funding provided to SMA (SIP) cadets.

• Data to determine if a graduate from the SMA or the USMMA has received a deferment or waiver from MARAD of their service obligation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Merchant Marine Act of 1936; Maritime Security Act of 2003 (Pub. L. 108–136).

PURPOSES:

MSCS provides an online method for students and graduates of the maritime academies to report their compliance with post-graduation national service obligation requirements. The system also assists MARAD in monitoring and documenting student's enrollment status while attending the maritime academies, making subsidy payments to SMA SIP students, and maintaining a record of the maritime academy graduates fulfillment of their service obligations. The MSCS also contains the graduate's employment determination waivers, and graduate school deferments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

MSCS is used by current students and graduates to report their compliance with service obligation requirements. MSCS is used by the Office of Maritime Workforce Development at MARAD to monitor student's enrollment status. MSCS is used by the USMMA to enter service obligation information on the USMMA graduates.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored in this system on a dedicated server.

RETRIEVABILITY:

Records are retrievable by name or social security number.

ACCESSIBILITY/SAFEGUARDS:

The production environment is located in a secure zone behind a firewall, called a Demilitarized Zone (DMZ) that enables secure connections from the Internet.

DOT Crisis and Security Management Center (CSMC) monitors all traffic within the department looking for any possible attacks. CSMC works with the modes during possible attacks. MARAD has Cisco ASA devices to monitor events on the system, detect attacks, and provide identification of unauthorized use of the system.

The Stennis Data Center in Mississippi hosting MSCS is occupied by the Department of Navy contractor personnel and is not open to the general public. The Data Center is uniquely constructed. It was formerly an ammunition manufacturing facility and as such, its external walls are constructed completely of steel reinforced concrete that is 12 to 48 inches thick. It has no windows. The construction materials as well as its location inside of the Stennis Space Center significantly reduce its vulnerability to most conventional types of external threats *i.e.* vehicle born improvised explosive devices (VBIEDs), burglary, trespassing, and unauthorized entry.

The facility operates in a secure closed manner. Outside personnel do not have unescorted access to the facility. Mail deliveries are received by facility personnel who screen all material before being brought into the facility. All equipment is delivered and sent through a secure loading dock. All equipment is installed either by or under the supervision of facility personnel. The test and development environments are available only to local personnel and selected users connecting via a Virtual Private Network.

System data is protected by daily backups to Linear Tape Open (LTO3) tape. In addition, daily backups of data to a local server hard drive, which are kept for a period of 14 days to safeguard the data.

RETENTION AND DISPOSAL:

The files are retained and disposed of according to the MARAD Records Schedule, according to the National Archives and Records Administration, and DOT policy.

SYSTEM OWNER(S) AND ADDRESS:

Academies Program Officer, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. 202–366–0284.

NOTIFICATION PROCEDURE:

Individuals wishing to know if their records appear in this system may make a request in writing to the FOIA/Privacy Act Officer, Maritime Administration, 1200 New Jersey Ave., SE., W26–499, Washington, DC 20590. The request must include the requester's name, mailing address, telephone number and/or e-mail address, a description and, if possible, the location of the records requested, and verification of identity (such as, a statement under penalty or perjury that the requester is the individual who he or she claims to be).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system should apply to the FOIA/Privacy Act Officer, following the same procedure as indicated under ''Notification procedure.'' Mariners can log into the system to view their documents.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest the content of information about them in this system should apply to the FOIA/Privacy Act Officer, following the same procedure as indicated under ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in MSCS is obtained from the USMMA and the SMA, and both current and former students of the USMMA and current and former students enrolled in the SIP program at the six (6) SMAs.

Information includes students' names (first, middle initial, and last), addresses, SSNs, date of birth, enrollment status while attending the Academies, subsidy payments to SMA SIP students, records of the graduates' fulfillment of service obligations, graduates' employment determination waivers, and graduate school deferments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

System Number:

DOT/MARAD 33

SYSTEM NAME:

Payroll Labor Distribution System (PLDS).

SECURITY CLASSIFICATION:

Unclassified, Sensitive.

SYSTEM LOCATION:

NCCIPS Data Center Loading Dock, Cypress Loop Road, Building 9323, Stennis Space Center, MS 39529.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

The Payroll Labor Distribution System is a system, which creates Accounting Transaction files based on Payroll information from IR Labor Cost File and the Reserve Fleet Files. This system has a biweekly processing cycle, which performs by the Federal users in the MARAD office of accounting through a menu processor, the processing programs, and data entry programs.

Therefore, there is the potential for the following categories of individuals'

information to be covered by this system:

- Data about MARAD personnel (officials and employees).

CATEGORIES OF RECORDS IN THE SYSTEM:

The input of information into PLDS is not discretionary. Utilizing information from Department of Interior (DOI) Payroll system and the Reserve Fleet files, PLDS performs accounting, reconciliation and cost assignment using data from both sources. PLDS contains the following types of information:

- DOI (Labor Cost File) which includes MARAD personnel's personal information, *e.g.,* SSN, first name, middle name, last name, pay grade and step, salary data.
- Reserve Fleet files contain MARAD personnel's personal information, *e.g.,* SSN, first name, middle name, last name, hours worked during a pay period.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Maritime Domain Awareness (MDA) program and the Maritime Security Act of 2003 (Pub. L. 108–136).

PURPOSES:

The Payroll Labor Distribution System allows for the utilization of payroll information, received from DOI (Labor Cost File), in performing the routine accounting functions for the Maritime Administration (MARAD) officials and employees. These functions include the comparison and reconciliation of data from the Labor Cost Distribution File against data on the Reserve Fleet Files. These functions also include the assignment of costs to project numbers based on information taken from the Reserve Fleet files, and the creation of accounting transactions for input into the Departmental Accounting Financial Information System (Dafis) Accounting System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine use of the information is for payroll accounting procedures, including reconciliation with the DOI Payroll system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored in this system on a dedicated server.

RETRIEVABILITY:

Only authorized staff in the Chief Financial Officer (CFO) office can retrieve records by searching name, SSN and/or project.

ACCESSIBILITY/SAFEGUARDS:

The production environment is located in a secure zone behind a firewall, called a Demilitarized Zone (DMZ) that enables secure connections from the Internet.

DOT Crisis and Security Management Center (CSMC) monitors all traffic within the department looking for any possible attacks. CSMC works with the modes during possible attacks. MARAD has Cisco ASA devices to monitor events on the system, detect attacks, and provide identification of unauthorized use of the system.

The Stennis Data Center in Mississippi hosting PLDS is occupied by the Department of Navy contractor personnel and is not open to the general public. The Data Center is uniquely constructed. It was formerly an ammunition manufacturing facility and as such, its external walls are constructed completely of steel reinforced concrete that is 12 to 48 inches thick. It has no windows. The construction materials as well as its location inside of the Stennis Space Center significantly reduce its vulnerability to most conventional types of external threats *i.e.* vehicle born improvised explosive devices (VBIEDs), burglary, trespassing, and unauthorized entry.

The facility operates in a secure closed manner. Outside personnel do not have unescorted access to the facility. Mail deliveries are received by facility personnel who screen all material before being brought into the facility. All equipment is delivered and sent through a secure loading dock. All equipment is installed either by or under the supervision of facility personnel.

The test and development environments are available only to local personnel and selected users connecting via a Virtual Private Network.

System data is protected by daily backups to Linear Tape Open (LTO3) tape. In addition, daily backups of data to a local server hard drive, which are kept for a period of 14 days to safeguard the data.

RETENTION AND DISPOSAL:

The files are retained and disposed of according to the MARAD Records Schedule, according to the National Archives and Records Administration, and DOT policy. Currently PLDS records are retained for 12 years. Records older than 12 years will be purged by system owner.

SYSTEM OWNER(S) AND ADDRESS:

John Hoban, Deputy Chief Financial Officer (CFO), Maritime Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. *John.Hoban@dot.gov.* 202–366–5110.

NOTIFICATION PROCEDURE:

Individuals wishing to know if their records appear in this system may make a request in writing to the FOIA/Privacy Act Officer. (DOT employees may make the request in person or in writing). The request must include the requester's name, mailing address, telephone number and/or e-mail address, a description and, if possible, the location of the records requested, and verification of identity (such as, a statement under penalty or perjury that the requester is the individual who he or she claims to be).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system should apply to the FOIA/Privacy Act Officer, following the same procedure as indicated under ''Notification procedure.''

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest the content of information about them in this system should apply to the FOIA/Privacy Act Officer, following the same procedure as indicated under ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in PLDS is obtained from DOI and Reserve Fleet files.

The records retrieved from DOI's Labor Cost File per pay period (via secured ftp) contain personal information such as SSN, name (last, middle, first), pay grade and step, and salary.

The data in Reserve Fleet File include SSN, name (last, middle, first), hours worked during a pay period.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

System Number:

DOT/MARAD 34

SYSTEM NAME:

Personnel Management Information System (PMIS).

SECURITY CLASSIFICATION:

Unclassified, Sensitive.

SYSTEM LOCATION:

NCCIPS Data Center Loading Dock, Cypress Loop Road, Building 9323, Stennis Space Center, MS 39529.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

The following categories of individuals are covered by PMIS:

1. All active MARAD employees, which include U.S. Merchant Marine Academy (USMMA) Federal employees.

2. All inactive MARAD and USMMA employees, which include retirees.

CATEGORIES OF RECORDS IN THE SYSTEM:

PMIS contains the following types of records:

• Payroll information such as pay grade, salary, awards, thrift savings data (TSP), reduction in force (RIF) Personnel data include SSN, name (first, middle, last), security clearance level, employment status, organization, *etc.*

• Project labor charges has the labor rate information for each MARAD mission project.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Merchant Marine Act of 1936.

PURPOSES:

PMIS is used for personnel management, which includes name, labor charges, approved project codes. The information is utilized for project management and forecasting labor charges.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

PMIS provides MARAD managers with timely Personnel Compensation & Benefit (PC&B) information to allow informed decision-making, which can be the cost effects of current and future staffing and the financial position of their organizations. PMIS is also used to generate bi-weekly, monthly, and ad hoc management reports, *e.g.,* a within grade increase (WGI) projection report for the employees' pay increase and budget cost within an organization.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored in this system on a dedicated server.

RETRIEVABILITY:

Records are retrievable by last name, organization code and pay period.

SAFEGUARDS:

The production environment is located in a secure zone behind a firewall, called a Demilitarized Zone (DMZ) that enables secure connections from the Internet.

DOT Crisis and Security Management Center (CSMC) monitors all traffic within the department looking for any possible attacks. CSMC works with the modes during possible attacks. MARAD has Cisco ASA devices to monitor events on the system, detect attacks, and provide identification of unauthorized use of the system.

The Stennis Data Center in Mississippi hosting PMIS is occupied by the Department of Navy contractor personnel and is not open to the general public. The Data Center is uniquely constructed. It was formerly an ammunition manufacturing facility and as such, its external walls are constructed completely of steel reinforced concrete that is 12 to 48 inches thick. It has no windows. The construction materials as well as its location inside of the Stennis Space Center significantly reduces its vulnerability to most conventional types of external threats *i.e.* vehicle born improvised explosive devices (VBIEDs), burglary, trespassing, and unauthorized entry.

The facility operates in a secure closed manner. Outside personnel do not have unescorted access to the facility. Mail deliveries are received by facility personnel who screen all material before being brought into the facility. All equipment is delivered and sent through a secure loading dock. All equipment is installed either by or under the supervision of facility personnel.

The test and development environments are available only to local personnel and selected users connecting via a Virtual Private Network.

System data is protected by daily backups to Linear Tape Open (LTO3) tape. In addition, daily backups of data to a local server hard drive, which are kept for a period of 14 days to safeguard the data.

RETENTION AND DISPOSAL:

The files are retained and disposed of according to the MARAD Records Schedule, according to the National Archives and Records Administration, and DOT policy. Schedule No. 232 (Dispose of when superseded by master file processing updates.)

SYSTEM OWNER(S) AND ADDRESS:

Deputy Chief Financial Officer (CFO), Maritime Administration, 1200 New Jersey Ave, SE., Washington, DC 20590. 202–366–5110.

NOTIFICATION PROCEDURE:

Individuals wishing to know if their records appear in this system may make a request in writing to the FOIA/Privacy Act Officer, Maritime Administration 1200 New Jersey Ave, SE., W26–499, Washington, DC 20590. The request must include the requester's name, mailing address, telephone number and/or e-mail address, a description and, if possible, the location of the records requested, and verification of identity (such as, a statement under penalty or perjury that the requester is the individual who he or she claims to be).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system should apply to the FOIA/Privacy Act Officer, following the same procedure as indicated under ''Notification procedure.'' Mariners can log into the system to view their documents.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest the content of information about them in this system should apply to the FOIA/Privacy Act Officer, following the same procedure as indicated under ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in PMIS is obtained from U.S. Department of Interior (DOI) and DOT/FAA Federal Personnel and Payroll System (FPPS).

The data from DOI includes employees' payroll data such as SSN, name (first, middle, last), hours worked, and salary.

The information from FPPS contains number of employees for each organization, SSN, name (first, middle, last), salary, type of pay plan, and leave balance.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: September 10, 2009.

Habib Azarsina,

Departmental Privacy Officer.

[FR Doc. E9–22388 Filed 9–16–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35294]

Squaw Creek Southern Railroad, Inc.—Lease and Operation Exemption—Central of Georgia Railroad Company

Squaw Creek Southern Railroad, Inc. (SQS), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and to operate, pursuant to an amendment dated August 31, 2009, to a lease agreement

(Agreement) entered into on April 21, 2008, with Central of Georgia Railroad Company (CGA), a wholly-owned subsidiary of Norfolk Southern Railway Company (NSR), approximately 12.5 miles of CGA's rail line between milepost E–53–3 at Machen, Jasper County, GA, and milepost E–65.8 at Newborn, Newton County, GA.

SQS states that the line connects with CGA and CSX Transportation, Inc. SQS believes its Agreement does not include an interchange commitment that violates 49 CFR 1150.43(h) (requiring submission of complete version of agreement that may limit future interchange with a third-party connecting carrier). Nevertheless, SQS has concurrently filed with its notice a complete version of the Agreement, marked ''highly confidential'' and submitted under seal pursuant to 49 CFR 1104.14(a). SQS also states that under the Agreement, it will receive per car handling charges from NSR for each car originating or terminating on SQS and interchanged with CGA. According to SQS, the Agreement also provides for an annual amount of minimal rental which SQS may pay in full or against which it can receive an offset from cars interchanged to CGA. However, the Agreement provides that there is no restriction on SQS's ability to interchange traffic with any other connecting carrier and that SQS is permitted local and switch rates without interchange restrictions.

SQS certifies that its projected annual revenues as a result of the transaction will not result in SQS becoming a Class II or Class I rail carrier and further certifies that its projected annual revenues will not exceed $5 million.

SQS states that it expects to consummate the transaction on or after September 30, 2009. The earliest this transaction may be consummated is October 1, 2009, the effective date of the exemption (30 days after the exemption was filed).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than September 24, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35294, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Andrew P. Goldstein, McCarthy, Sweeney & Harkaway, P.C., 2175 K Street, NW., Suite 600, Washington, DC 20037.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 14, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–22387 Filed 9–16–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Electronic Funds Transfer (EFT) Market Research Study

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the ''Electronic Funds Transfer (EFT) Market Research Study.''

DATES: Written comments should be received on or before November 16, 2009.

ADDRESSES: Direct all written comments to Financial Management Service, Records and Information Management Branch, Room 135, 3700 East-West Highway, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Request for additional information should be directed to Edita Rickard, EFT Strategy Division, 401 14th Street, SW., Room 304C, Washington, DC 20227, 202–874–7165.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Electronic Funds Transfer (EFT) Market Research Study.

OMB Number: 15 10–0074.

Form Number: None.

Abstract: Study of Federal benefit recipients to identify barriers to significant increases in use of EFT for benefit and vendor payments.

Current Action: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households, Federal Government.

Estimated Number of Respondents: 19,500.

Estimated Time per Respondent: 3 hours 30 minutes.

Estimated Total Annual Burden Hours: 7,500.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up cost and cost of operation, maintenance and purchase of services to provide information.

Dated: September 10, 2009.

Rita Bratcher,

Assistant Commissioner and Chief Disbursing Officer, Payment Management.

[FR Doc. E9–22407 Filed 9–16–09; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Reasonable Charges for Inpatient MS–DRGs and SNF Medical Services for 2010; Fiscal Year Update

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Section 17.101 of Title 38 of the Code of Federal Regulations sets forth the Department of Veterans Affairs (VA) medical regulations concerning ''Reasonable Charges'' for medical care or services provided or furnished by VA to a veteran:

—For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;
—For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or
—For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

The regulations include methodologies for establishing billed amounts for the following types of charges: acute inpatient facility charges; skilled nursing facility/sub-acute inpatient facility charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by Healthcare Common Procedure Coding System (HCPCS) Level II codes. The regulations also provide that data for calculating actual charge amounts at individual VA facilities based on these methodologies will either be published in a notice in the **Federal Register** or will be posted on the Internet site for the Veterans Health Administration Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rates/index.asp*, under ''Charge Data.'' Certain charges are hereby updated as described in the Supplementary Information section of this notice. These changes are effective October 1, 2009.

When charges for medical care or services provided or furnished at VA expense by either VA or non-VA providers have not been established under other provisions of the regulations, the method for determining VA's charges is set forth at 38 CFR 17.101(a)(8).

FOR FURTHER INFORMATION CONTACT: Romona Greene, Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–1595. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Of the charge types listed in the Summary section of this notice, only the acute inpatient facility charges and skilled nursing facility/sub-acute inpatient facility charges are being changed. Charges for the following charge types: partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes are not being changed. These outpatient facility charges and Professional charges remain the same as set forth in a notice published in the **Federal Register** on December 11, 2008 (73 FR 239).

Based on the methodologies set forth in 38 CFR 17.101(b), this document provides an update to acute inpatient charges that were based on 2009 Medicare severity diagnosis related groups (MS–DRGs). Acute inpatient facility charges by MS–DRGs are set forth in Table A and are posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rates/index.asp*, under ''Charge Data.'' This Table A corresponds to the Table A referenced in the October 1, 2008, **Federal Register** Notice. Table A referenced in this notice provides updated charges based on 2010 MS–DRGs and will replace Table A posted on the Internet site of the Veterans Health Administration Chief Business Office, which corresponds to the Table A referenced in the October 1, 2008, **Federal Register** notice.

Also, this document provides for an updated all-inclusive per diem charge for skilled nursing facility/sub-acute inpatient facility charge using the methodologies set forth in 38 CFR 17.101(c) and it is adjusted by a geographic area factor based on the location where the care is provided. The skilled nursing facility/sub-acute inpatient facility per diem charge is set forth in Table B and is posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rates/index.asp*, under ''Charge Data.'' This Table B corresponds to the Table B referenced in the October 1, 2008, **Federal Register** Notice. Table B referenced in this notice provides updated all-inclusive nationwide skilled nursing facility/sub-acute inpatient facility per diem charge and will replace Table B posted on the Internet site of the Veterans Health Administration Chief Business Office, which corresponds to the Table B referenced in the October 1, 2008, **Federal Register** notice.

The charges in this update for acute inpatient facility and skilled nursing facility/sub-acute inpatient facility services are effective October 1, 2009.

In this update, we are retaining the table designations used for acute inpatient facility charges by MS–DRGs which is posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rates/index.asp*, under ''Charge Data.'' We also are retaining the table designation used for skilled nursing facility/sub-acute inpatient facility charges which is posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rates/index.asp*, under ''Charge Data.'' Accordingly, the tables identified as being updated by this notice correspond to the applicable tables referenced in the October 1, 2008, notice beginning with Table A through Table B.

We have updated the list of data sources presented in Supplementary Table 1 posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rates/index.asp* to reflect the updated data sources used to establish the updated charges described in this notice.

We have also updated the list of VA medical facility locations. As a reminder, in Supplementary Table 3 posted on the internet site of the Veterans Health Administration Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rates/index.asp*, we set forth the list of VA medical facility locations, which includes their three-digit zip codes and provider-based/non-provider-based designations.

Consistent with VA's regulations, the updated data tables and supplementary tables containing the changes described in this notice will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rates/index.asp*, under ''Charge Data.''

Approved: September 3, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. E9–22382 Filed 9–16–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
September 17, 2009

Part II

The President

Proclamation 8414—To Address Market Disruption From Imports of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China

Federal Register
Vol. 74, No. 179
Thursday, September 17, 2009

Presidential Documents

Title 3—

The President

Proclamation 8414 of September 11, 2009

To Address Market Disruption From Imports of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China

By the President of the United States of America

A Proclamation

1. On July 9, 2009, the United States International Trade Commission (USITC) transmitted to me a report on its investigation under section 421 of the Trade Act of 1974, as amended (the ''Trade Act'') (19 U.S.C. 2451), with respect to imports of certain passenger vehicle and light truck tires from the People's Republic of China (China). In its report, the USITC stated that it had reached an affirmative determination under section 421(b)(1) of the Trade Act that certain passenger vehicle and light truck tires from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

2. For purposes of its investigation, the USITC defined certain passenger vehicle and light truck tires from China as new pneumatic tires, of rubber, from China, of a kind used on motor cars (except racing cars) and on-the-highway light trucks, vans, and sport utility vehicles, provided for in subheadings 4011.10.10, 4011.10.50, 4011.20.10, and 4011.20.50 of the Harmonized Tariff Schedule of the United States (HTS).

3. The USITC commissioners voting in the affirmative under section 421(b) of the Trade Act also transmitted to me their recommendations made pursuant to section 421(f) of the Trade Act (19 U.S.C. 2451(f)) on proposed remedies that, in their view, would be necessary to remedy the market disruption and the basis for each recommendation.

4. Pursuant to section 421(a) of the Trade Act (19 U.S.C. 2451(a)), I have determined to provide import relief with respect to new pneumatic tires, of rubber, from China, of a kind used on motor cars (except racing cars) and on-the-highway light trucks, vans, and sport utility vehicles, provided for in subheadings 4011.10.10, 4011.10.50, 4011.20.10, and 4011.20.50 of the HTS.

5. Such import relief shall take the form of an additional duty on imports of the products described in paragraph 4, imposed for a period of 3 years. For the first year, the additional duty shall be in the amount of 35 percent *ad valorem* above the column 1 general rate of duty. For the second year, the additional duty shall be in the amount of 30 percent *ad valorem* above the column 1 general rate of duty, and in the third year, the additional duty shall be in the amount of 25 percent *ad valorem* above the column 1 general rate of duty.

6. Section 421(m) of the Trade Act (19 U.S.C. 2451(m)) provides that import relief under this section shall take effect not later than 15 days after the President's determination to provide such relief.

7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including

the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 421 and 604 of the Trade Act, do proclaim that:

(1) In order to apply additional duties on imports of the certain passenger vehicle and light truck tires from China described in paragraph 4, subchapter III of chapter 99 of the HTS is modified as provided in the Annex to this proclamation.

(2) The modifications to the HTS made by this proclamation, including the Annex thereto, shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EDT on September 26, 2009, and shall continue in effect as provided in this proclamation and its Annex, unless such actions are earlier expressly modified or terminated.

(3) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of September, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

Billing code 3195–W9–P

ANNEX

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods the product of China that are entered, or withdrawn from warehouse for consumption, on or after September 26, 2009, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified as set forth herein:

1. The following new U.S. note is inserted in numerical sequence in such subchapter:

"14. (a) For the purposes of subheadings 9903.40.05 and 9903.40.10, the duties provided for in this subchapter are cumulative duties which apply in addition to the duties otherwise imposed on the articles involved.

(b) The duty rates provided for in such subheadings shall each be reduced as follows:

September 26, 2010 through September 25, 2011 ..... 30%
September 26, 2011 through September 25, 2012 ..... 25%

No rate of duty provided for in such subheadings in chapter 99 shall be imposed on any article described in such subheadings after the close of September 25, 2012."

2. The following new subheadings and superior text are inserted in numerical sequence, with the language inserted in the columns entitled "Heading/Subheading", "Article Description", and "Rates of Duty 1 General", respectively:

	"New pneumatic tires, of rubber, the foregoing the product of China, under the terms of U.S. note 14 to this subchapter:	
9903.40.05	Radial tires of a kind used on motor cars (other than racing cars), station wagons, sport utility vehicles, vans and on-the-highway light trucks (provided for in subheading 4011.10.10 or 4011.20.10).....	35%
9903.40.10	Other tires of a kind used on motor cars (other than racing cars), station wagons, sport utility vehicles, vans and on-the-highway light trucks (provided for in subheading 4011.10.50 or 4011.20.50).....	35%"

[FR Doc. E9–22507
Filed 9–16–09; 8:45 am]
Billing code 7020–02–C

Federal Register

Thursday,
September 17, 2009

Part III

The President

Proclamation 8415—National Employer Support of the Guard and Reserve Week, 2009

Proclamation 8416—Fifteenth Anniversary of the Violence Against Women Act

Federal Register
Vol. 74, No. 179
Thursday, September 17, 2009

Presidential Documents

Title 3—

The President

Proclamation 8415 of September 14, 2009

National Employer Support of the Guard and Reserve Week, 2009

By the President of the United States of America

A Proclamation

Citizens willing to serve in uniform when duty calls have helped protect our freedom and security since our Nation's founding more than 200 years ago. During times of peace, they have worked in our cities and towns, contributing their skill and energy to local businesses, schools, and civic organizations. During times of strife at home and abroad, they have served with distinction, protecting the United States from domestic and foreign threats. In commemorating National Employer Support of the Guard and Reserve Week, we honor the courageous members of our Guard and Reserve and their employers, whose support strengthens our Armed Forces and helps protect our country.

Our Guard and Reserve personnel are training arduously and serving valiantly as they are called upon to meet new challenges. Active here at home and in overseas operations, they are a key component in our national defense. Members of our Guard and Reserve serve with honor at home and in Afghanistan, Iraq, and other regions around the world, and they are willing to make the ultimate sacrifice for our country. They help respond to natural disasters and humanitarian emergencies, and protect against threats to our national security. Our Nation owes a debt of gratitude to these brave men and women who balance the demands of civilian and military life.

Through their continued support and flexibility, employers across the country bolster the efforts of members of the Guard and Reserve. Employers often make financial and organizational sacrifices in the interest of our national security. The commitment of these employers helps ensure that our troops are mission-ready and provides a measure of assurance, comfort, and pride to those who leave their jobs and families behind as they are deployed. The United States is grateful to the many businesses and organizations that enable Guard and Reserve personnel to remain engaged in both their professional and their military careers.

The United States has always benefited from the contributions of those willing to depart the comforts of home to answer the call of duty. Today, the American people celebrate the service and sacrifice of members of our Guard and Reserve as we pay special tribute to their employers for their admirable dedication and support.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, do hereby proclaim September 13 through September 19, 2009, as National Employer Support of the Guard and Reserve Week. I encourage all Americans to join me in expressing our heartfelt thanks to the members of the National Guard and Reserve and their civilian employers. I also call on State and local officials, private organizations, and all military commanders, to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. E9–22584
Filed 9–16–09; 11:15 am]
Billing code 3195–W9–P

Presidential Documents

Proclamation 8416 of September 14, 2009

Fifteenth Anniversary of the Violence Against Women Act

By the President of the United States of America

A Proclamation

Today, we commemorate a milestone in our Nation's struggle to end violence against women. Authored by then United States Senator Joe Biden and signed into law in September 1994, the Violence Against Women Act (VAWA) was the first law to create a comprehensive response to this problem at the national level. This landmark achievement has helped our Nation make great strides towards addressing this global epidemic.

VAWA sought to improve our criminal justice system's response to violence against women and to increase services available to victims. It directed all 50 States to recognize and enforce protection orders issued by other jurisdictions, and it created new Federal domestic violence crimes. The law also authorized hundreds of millions of dollars to communities and created a national domestic violence hotline.

This bipartisan accomplishment has ushered in a new era of responsibility in the fight to end violence against women. In the 15 years since VAWA became law, our Nation's response to domestic violence, dating violence, sexual assault, and stalking has strengthened. Communities recognize the special needs of victims and appreciate the benefits of collaboration among professionals in the civil and criminal justice system, victim advocates, and other service providers. With the support of VAWA funds, dedicated units of law enforcement officers and specialized prosecutors have grown more numerous than ever before. Most importantly, victims are more likely to have a place to turn for help—for emergency shelter and crisis services, and also for legal assistance, transitional housing, and services for their children.

Despite this great progress, our Nation's work remains unfinished. More families and communities must recognize that the safety of our children relates directly to the safety of our mothers. Access to sexual assault services, especially in rural America, must be increased. American Indian and Alaska Native women experience the highest rates of violence, and we must make it a priority to address this urgent problem. We must also work with diverse communities to make sure the response to violence is relevant and culturally appropriate. We must prevent the homicide of women and girls who have suffered from domestic violence, dating violence, sexual assault, and stalking.

Far too many women in our communities and neighborhoods, and across the world, continue to suffer from violence. Inspired by the promise and achievement of the Violence Against Women Act, our Nation stands united in its determination to end these crimes and help those in need.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the Fifteenth Anniversary of the Violence Against Women Act. I call upon men and women of all ages, communities, organizations, and all levels of government, to work in collaboration to end violence against women.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. E9–22585
Filed 9–16–09; 11:15 am]
Billing code 3195–W9–P

Reader Aids

Federal Register

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Thursday, September 17, 2009

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Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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LIST OF PUBLIC LAWS

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 774/P.L. 111–50

To designate the facility of the United States Postal Service located at 46-02 21st Street in Long Island City, New York, as the ''Geraldine Ferraro Post Office Building''. (Aug. 19, 2009; 123 Stat. 1979)

H.R. 987/P.L. 111–51

To designate the facility of the United States Postal Service located at 601 8th Street in Freedom, Pennsylvania, as the ''John Scott Challis, Jr. Post Office''. (Aug. 19, 2009; 123 Stat. 1980)

H.R. 1271/P.L. 111–52

To designate the facility of the United States Postal Service located at 2351 West Atlantic Boulevard in Pompano Beach, Florida, as the ''Elijah Pat Larkins Post Office Building''. (Aug. 19, 2009; 123 Stat. 1981)

H.R. 1275/P.L. 111–53

Utah Recreational Land Exchange Act of 2009 (Aug. 19, 2009; 123 Stat. 1982)

H.R. 1397/P.L. 111–54

To designate the facility of the United States Postal Service located at 41 Purdy Avenue in Rye, New York, as the ''Caroline O'Day Post Office Building''. (Aug. 19, 2009; 123 Stat. 1989)

H.R. 2090/P.L. 111–55

To designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the ''Frederic Remington Post Office Building''. (Aug. 19, 2009; 123 Stat. 1990)

H.R. 2162/P.L. 111–56

To designate the facility of the United States Postal Service located at 123 11th Avenue South in Nampa, Idaho, as the ''Herbert A Littleton Postal Station''. (Aug. 19, 2009; 123 Stat. 1991)

H.R. 2325/P.L. 111–57

To designate the facility of the United States Postal Service located at 1300 Matamoros Street in Laredo, Texas, as the ''Laredo Veterans Post Office''. (Aug. 19, 2009; 123 Stat. 1992)

H.R. 2422/P.L. 111–58

To designate the facility of the United States Postal Service located at 2300 Scenic Drive in Georgetown, Texas, as the ''Kile G. West Post Office Building''. (Aug. 19, 2009; 123 Stat. 1993)

H.R. 2470/P.L. 111–59

To designate the facility of the United States Postal Service located at 19190 Cochran Boulevard FRNT in Port Charlotte, Florida, as the ''Lieutenant Commander Roy H. Boehm Post Office Building''. (Aug. 19, 2009; 123 Stat. 1994)

H.R. 2938/P.L. 111–60

To extend the deadline for commencement of construction of a hydroelectric project. (Aug. 19, 2009; 123 Stat. 1995)

H.J. Res. 44/P.L. 111–61

Recognizing the service, sacrifice, honor, and professionalism of the Noncommissioned Officers of the United States Army. (Aug. 19, 2009; 123 Stat. 1996)

S.J. Res. 19/P.L. 111–62

Granting the consent and approval of Congress to amendments made by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact. (Aug. 19, 2009; 123 Stat. 1998)

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